

GAHC010206192021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6659/2021

BIYESH KHETRAPAL @ BIYESH BAURI
S/O. LT. RAMLAL KHETRAPAL, VILL. LAKWA RANGAPARA, P.O. LAKWA-
785688, DIST. SIBSAGAR, ASSAM.

VERSUS

OIL AND NATURAL GAS CORPN. LTD. AND ANR.
REP. BY THE EXECUTIVE DIRECTOR, ONGC, E.R.B.C. NAZIRA, P.O.
NAZIRA-785640, DIST. SIBSAGAR, ASSAM.

2:ONGC CONTRACTUAL MAZDOOR SANGHA
REGD. NO. 1530
A REGISTERED UNION OF ONGC LTD. REP. BY THE PRESIDENT SHRI
DILIP BORUAH HAVING ITS REGD. OFFICE NEAR ONGC COLONY P.O.
LAKWA-785640
DIST. SIBSAGAR
ASSAM

Advocate for the Petitioner : MR D TALUKDAR
Advocate for the Respondent : MR S CHAKRABORTY (R-1)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 25-04-2023

Heard Mr. P. Choudhury, learned counsel appearing for the writ petitioner. Also

heard Mr. S. Chakraborty, learned counsel appearing for the respondent No. 1. Mr. A. Mobaraque, learned counsel has appeared for the respondent No. 2.

2. The writ petitioner herein, viz. Sri Biyesh Khetrapal @ Biyesh Bauri claims that he was engaged as a casual/ contingent worker under the respondent No. 1 w.e.f. 01-04-1986 and since then, he has been working as such. It appears that around that time around 69 casual workers were working on contractual basis, under the respondent No. 1, at Lakwa. Due to non-regularization of those 69 casual/ contingency workers including the writ petitioner herein, an industrial dispute was raised pursuant where to, Reference Case No. 21(C)/ 1999 and Reference Case No. 31(C)/1999 were registered before the Industrial Tribunal at Guwahati. The reference before the Tribunal was as follows:-

"Whether the claim of the ONGC Contractual Mazdoor Sangha, Lakwa regarding regularization of services of the members (who are working as contractual workers) in ONGC Ltd. at Lakwa is justified? If so, to what relief, the workmen are entitled?"

3. By the award dated 03-12-2000 passed in the reference cases, the learned Industrial Tribunal had answered the reference in favour of the workmen. The operative part of the award dated 03-12-2000 is reproduced here-in-below for ready reference:-

"In the result, I hereby, direct the Management to regularize all the 69 Temporary Workmen in their service within a year from the date of the Award. Fifteen workers who have been discharged without adopting the procedure prescribed by law during the pendency of the Reference should be re-engaged immediately and be regularized accordingly. If all the workers could not be regularized within a period of one year, they should be paid equally wages with those of regular employees till they are regularized by adopting formal procedure.

This Reference is answered accordingly. Prepare the Award accordingly."

4. The award dated 03-12-2000 was assailed before this Court by the Management by filing W.P.(C) No. 8369/2001 and W.P.(C) No. 8367/2001, which were dismissed by the Single Judge by the judgment and order dated 21-05-2004. W.A. No. 266/2004 and W.A. No. 267/2004 were preferred by the respondent No. 1 against the judgment dated 21-05-2004 passed by the learned Single Judge. Initially the writ appellate court had allowed both the appeals by setting aside the order of the learned Single Judge with a direction to the learned Tribunal to reconsider the matter. However, aggrieved with the order dated 02-02-2012 of the Division Bench, the workmen had preferred SLP No. 23495/2012 before the Hon'ble Supreme Court of India, which was allowed by the order dated 03-04-2018 and the matter was remanded back to the Division Bench for a fresh decision of the writ appeals. Consequent to the order dated 03-04-2018 passed by the Supreme Court, the two writ appeals being W.A. No. 266/2004 and W.A. No. 267/2004 were heard afresh and both the appeals were dismissed by affirming the judgment and order passed by the learned Single Judge in W.P.(C) No. 8367/2001 and W.P.(C) No. 8369/2001. In this manner, the award dated 03-12-2000 had attained finality. However, since the award dated 03-12-2000 had not been implemented qua the writ petitioner, the instant writ petition has been filed.

5. The pleaded stand of the respondent No. 1 is that since there is a dispute regarding the true identity of the writ petitioner, no benefit under the award of the learned Industrial Tribunal has been extended to him. The dispute as regards the identity of the writ petitioner is primarily grounded on the facts that the writ petitioner had produced two sets of documents whereby his name has been recorded as Biyesh

Khetrapal in one set of documents whereas in the other set of documents, his name is shown as Biyesh Bauri.

6. On the last occasion, after hearing the submissions advanced by the learned counsel for both the sides, this Court had passed order dated 16-03-2023 directing the petitioner to produce original documents in support of his claim that Biyesh Khetrapal @ Biyesh Bauri was one and the same person and the writ petitioner was also asked to remain present before this Court. The respondent No. 1 was also directed to verify and apprise this Court as to whether, there was any other person by the name of Biyesh Khetrapal @ Biyesh Bauri who was working either directly or indirectly under the respondent No. 1 during the relevant period of time. In terms of the order dated 16-03-2023, the writ petitioner has appeared before this Court along with the original documents which includes the Identity Cards issued by the ONGC from time to time and the other documents to show that Biyesh Khetrapal @ Biyesh Bauri, Son of Ram Lal Khetrapal @ Ram Lal Bauri is one and the same person.

7. By referring to the evidence produced before this Court, Mr. P. Choudhury, learned counsel for the writ petitioner submits that the name of his client is Biyesh Khetrapal but the name "Biyesh Bauri" has been used in some documents since that was the community surname of the petitioner. According to Mr. Choudhury the petitioner is an illiterate person, who is a school dropout at the level of Class-X and therefore, he was not aware of the implications of the use of community surname in the official documents. Mr. Choudhury further submits that there is not even an iota of material produced by the

respondent No. 1 to raise a genuine dispute as regards the identity of the petitioner or to demonstrate that the writ petitioner was not an employee under the respondent No. 1 w.e.f. 01-04-1986. According to Mr. Choudhury, the dispute sought to be raised by the ONGC is imaginary and nothing but an attempt to deprive the petitioner of the benefits flowing to him under the award dated 03-12-2000.

8. Mr. S. Chakraborty, learned counsel for the respondent No. 1, on the other hand, submits that the petitioner has produced three different PAN cards with the names Biyesh Khetrapal and Biyesh Bauri, before the authorities. Moreover, although he claims to have been engaged as a 'Khalasi' under the respondent No. 1 w.e.f. 01-04-1986 yet, the certificate issued by the school Headmaster goes to show that the petitioner was in the school till the year 1987. Mr. Choudhury, therefore, submits that, the writ petitioner, who was studying in a school till the year 1987, could not have been engaged as a 'Khalasi' under the respondent No. 1 on 01-04-1986. By referring to the contradictory materials produced by the petitioner, Mr. Chakraborty further submits that there is a genuine possibility that the writ petitioner may not be the real Biyesh Khetrapal who was originally engaged as Khalasi under the ONGC. Since, the documents produced by the writ petitioner raises a genuine doubt as regards the true identity of the petitioner, hence, there are disputed questions of fact in this case which cannot be decided in a writ proceeding. According to Mr. Chakraborty, the Writ Court also cannot issue a declaration in favour of the writ petitioner that Biyesh Khetrapal and Biyesh Bauri is one and the same person or that he belongs to a particular community or that he is a person who was employed as a Khalasi under the ONGC. Such being the position, submits Mr. Chakraborty,

the respondent No. 1 rightly did not act on the award dated 03-12-2000 insofar as the claim of the writ petitioner is concerned. To sum up his arguments, Mr. Chakraborty submits that this matter be remanded to the civil court as the matter involves disputed questions of facts.

9. Mr. A. Mabarague, learned counsel for the respondent No. 2 submits that save and except confirming that the writ petitioner is a member of the respondent No. 2 union, he has no further submission to make in this matter.

10. In reply Mr. Choudhury has argued that the certificate issued by the school Headmaster merely indicates the period till which the petitioner had paid school fees and the same does not in any way certify that he was actually attending classes in the year 1987. Mr. Choudhury further submits that the petitioner is a school dropout and therefore, the certificate issued by the school Headmaster, does not in any manner raise a doubt as regards the claim of the petitioner of being engaged as Khalasi under the respondent No. 1 w.e.f. 01-04-1986. Insofar as production of multiple PAN cards are concerned, Mr. Choudhury submits that whether or not holding of multiple PAN cards by a single person is permissible under the law is not the subject matter of this writ petition. However, he would have no objection if appropriate action, as may be permissible under the law, is initiated in the matter.

11. I have considered the submissions advanced by the learned counsel for both the sides and have also perused the materials available on record including the original documents such as photo identity cards, PAN cards, bank passbook certificates etc.

produced by the writ petitioner. The writ petitioner is also personally present before this Court. After examining the petitioner as well as the documents produced by him, there is no manner of doubt in the mind of this Court that Biyesh Khetrapal and Biyesh Bauri are one and the same person. In other words, there is no element of doubt in this case that Biyesh Khetrapal @ Biyesh Bauri, son of Ram Lal Khetrapal @ Ram Lal Bauri, resident of Lakuwa, village Rongagora in the district of Sivasagar is one and the same person and he is personally present before this Court today in support of his claim. Moreover, the identity of the petitioner, as a member of the respondent No. 2 has also been confirmed by Mr. A. Mobaraque. In view of the above, this Court is of the unhesitant opinion that there is no real dispute as regards the identity of the writ petitioner.

12. Insofar as the plea of Mr. Chakraborty that there are several disputed questions of facts involved in this writ petition which requires adjudication by the civil court, I am unable to accept such contention of the learned counsel for the respondent No. 1 for the following reasons. Firstly, the respondent No. 1 had never raised any dispute with regard to the identity of Biyesh Khetrapal, son of Ram Lal Khetrapal, a resident of Lakuwa under Sivasagar district as one of the 69 workmen whose cases were under consideration before the learned Industrial Tribunal. I also find from the record that the name of the writ petitioner finds place at Sl. No. 12 of the list of workmen whose cases were considered by the award dated 03-12-2000. Secondly, although the respondent No. 1 was given an opportunity to verify and place the particulars before this Court to show that there was any person by the name of Biyesh Khetrapal @ Biyesh Bauri, who was working under the respondent No. 1 during the relevant period, no such particulars have been placed before

this Court today. Mr. Chakraborty also fairly submits that no other person by the name of Biyesh Khetrpal or Biyesh Bauri has come up with any claim under the award dated 03-12-2000. If that be so, there can be no justifiable ground to reject the claim of the writ petitioner.

13. As noted above, the only objection of the respondent No. 1 is pertaining to the discrepancy projected in the school certificate issued by the Headmaster showing that the person by the name of Biyesh Khetrpal was in the school during the year 1987 and the production of three different PAN cards by the person viz. Biyesh Khetrpal @ Biyesh Bauri.

14. Insofar as the school certificate is concerned, Mr. Choudhury has already clarified the matter and this Court does not find any valid ground to discard such arguments of the petitioner's counsel. Coming to the issue of multiple PAN cards produced by the petitioner, if that is impermissible under the law then law will take its own course. To that extent, the respondent No. 1 will be at liberty to initiate appropriate action in the matter, if so advised. However, merely because some discrepancy is there in the documents relied upon by the petitioner, that by itself, in the opinion of this Court, does not give rise to any disputed question of fact as regards the true identity of the petitioner. The respondent No. 1 has not been able to produce any material to raise a genuine dispute as regards the true identity of the writ petitioner so as to term it as a disputed question of fact. Therefore, this Court is of the opinion that there is no disputed question of fact involved in this case, which requires to be referred to the civil court.

15. For the reasons stated hereinabove, this writ petition succeeds and is hereby allowed.

16. The respondent No. 1 is directed to implement the award dated 03-12-2000 *qua* the writ petitioner, within a period of 90 days from the date of receipt of a certified copy of this order, failing which, the financial benefits accruing to the writ petitioner under the award would carry interest @ 12% per annum from the date of the award till disbursement.

Writ petition stands disposed of accordingly.

JUDGE

GS

Comparing Assistant