

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 6170 of 2007**

M/s. Ispat Godawari (Limited) Now Godawri Power and Ispat Limited,
Through : Managing Director Siltara, Industrial Estate, Raipur (CG)

---- **Petitioner**

Versus

1. Virendra Kumar Verma, Aged about 37 yrs. S/o Late Hari Ram Verma, R/o Village Godi, Post-Mohandi Thana – Dharsiva, Distt. Raipur (CG)
3. President, Industrial Court Of CG, Mahanadi Khand, Near D.K.S. Bhawan Raipur (CG)
4. Labour Court, Raipur Anand Nagar Raipur (CG)

---- **Respondents**

For Petitioner	:	Mr. N.K. Vyas, Advocate
For Respondent No.1	:	Mr. J.K. Gupta, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board**

26.10.2017

Heard.

1. This petition, under Article 227 of the Constitution of India, is directed against order dated 19.04.2007 passed by the State Industrial Court, Raipur, Chhattisgarh in Appeal No.78/CGIR/A-II/2006 whereby, reversing the order passed by the Labour Court, the Industrial Court has passed an order of reinstatement of respondent employee.
2. The factual backdrop giving rise to dispute between the parties and the impugned order are that the respondent employee was working in the petitioner's establishment and engaged in industrial activity. During the course of employment, while working in the factory, the employee suffered an accident resulting in loss of three fingers. It is said that later on, he was disengaged from employment. When the employee's prayer for re-

engagement in the establishment was allegedly refused on the ground that now he cannot be engaged for the same work and his request for engagement in any other light work was rejected, the respondent employee filed an application under Section 31(3) of the C.G.I.R. Act before the Labour Court praying for reinstatement on the pleadings, inter alia, that he was employed in the establishment by the petitioner and therefore, the petitioner being direct employer is liable to reinstate in service. According to the employee, the provision of Section 25 -F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947') under Chapter VA of the Act of 1947 has been made applicable to scheduled industries under the Madhya Pradesh and Chhattisgarh Industrial Relations Act which obliged the employer to pay retrenchment compensation. As no retrenchment compensation was paid before terminating the employer, the retrenchment was illegal.

3. The employer submitted his written statement to the claim of the employee by submitting that the employee was engaged by the contractor and he was not the employee of the petitioner. According to the petitioner, the employee was engaged by the contractor, who was duly licensed under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act of 1970'). The petitioner of the purpose of the said Act was only a principal employer and therefore, no relief of reinstatement could be sought against the petitioner. The parties led their respective oral and documentary evidence. The claim of the employee, however, did not find favour before the Labour Court and the application was dismissed. Aggrieved by the said order, respondent employee preferring appeal before the Industrial Court. The Industrial Court allowed the appeal reversing order of the Labour Court by recorded a finding that the respondent was, in fact, an employee of the petitioner and he being disabled person, entitled to reinstatement in employment. It is this order which is under challenge in this petition.

4. Learned counsel for the petitioner made following submissions :

- (a) that the Industrial Court recorded a perverse finding of relationship of employer and employee between the petitioner and respondent No.1 which is contrary to the pleadings and the oral evidence on record.

- (b) the finding of relationship of employer and employee on the basis of discharge of statutory obligation of principal employer of depositing E.S.I.

contribution, by itself, could not be made a basis to hold that the petitioner was the direct employer.

(c) the provision of C.G.I.R. Act to the extent there inconsistent with the provision of the Act of 1970 would be overridden and therefore, while making an enquiry with regard to the fact whether the petitioner was direct employer of respondent No.1, the statutory definition of 'employer' and 'employee' as contained in C.G.I.R. Act could not be taken recourse to.

Learned counsel for the petitioner places reliance upon the decision of the Supreme Court in the case of **General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and another, 2011 (1) SCC 635.**

(d) Having upheld the finding that the respondent employee had not completed 240 days of work in the industrial establishment, no relief of reinstatement could be granted, even if it is assumed that the petitioner was a direct employer.

(e) The provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short the 'Act of 1995') are not applicable to a private establishment. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **Dalco Engineering Private Limited Vs. Satish Prabhakar Padhye and others and one connected matter, 2010 (4) SCC 378.**

5. Per contra, learned counsel for respondent No.1 would submit that the finding of the Industrial Court that the petitioner was the direct employer of respondent No.1 is a finding of fact based on relevant and admissible evidence. Therefore, such finding of fact could not be assailed nor supervisory jurisdiction of this Court could be invoked under Article 227 of the Constitution of India. It is submitted that the Industrial Court found that the petitioner was depositing the E.S.I. contributions without mentioning that the employee was a contract employer. Therefore, irrespective of the fact that there was a licence issued in favour of the contractor, it was still open for Industrial Court to hold an enquiry, whether contract employment was sham or genuine. He would further submit that in relation to scheduled industry, the definition of 'employer' and 'employee' as engrafted in C.G.I.R. Act would be

applicable for all purposes including even those cases where the employee is engaged to work for the establishment through a contractor licenced under Section 12 of the Act of 1970. Lastly, it is submitted that the respondent employed while working in the Industrial unit lost his three fingers and looking to this disabled condition, the order of reinstatement does not warrant any interference.

6. In order to hold that the petitioner was a direct employer of the respondent employee who admittedly was engaged to work in the petitioner industrial establishment, the Industrial Court has relied upon the E.S.I. Identity Card Ex.P/3 and the circumstance that E.S.I. contribution is paid by the petitioner. In addition, the Industrial Tribunal has also relied upon the definition of 'employer' and 'employee' as incorporated under Section 2(13) and 2(14) of the C.G.I.R. Act to hold that the respondent No.1 would be an employee and therefore, the petitioner would be liable as direct employer to reinstate.
7. In the case of General Manager, (OSD), Bengal Nagpur Cotton Mills (supra) arising from the State of C.G. only, Hon'ble Supreme Court taking note of submissions observed that the provision contained in CLRA Act would override the provisions of MPIR Act as below:

“8. The appellant relied upon the decisions of this Court in *NTPC v. Badri Singh Thakur*, (2008) 9 SCC 377 where this Court held that the provisions of the CLRA Act would override the provisions of the MPIR Act and in *Municipal Corpn. of Greater Mumbai v. K.V. Shramik Sangh*, (2002) 4 SCC 609 where this Court observed that merely because the principal employer and contractor have not complied with the provisions of the CLRA Act in regard to registration, the system of carrying out work through contract labour could not be termed as sham.”

8. In the case of **Steel Authority of India v. Union of India & Ors.**, AIR 2006 SC 3229, legislative scheme of the CLRA Act was examined by the Supreme Court and it was held as below:

“18. The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinary, a writ Court would not go into such a question.”

9. In the present case, there is overwhelming evidence on record that the

respondent was engaged by the contractor who was duly licensed under the provision of the CLRA Act. This fact has not been disputed. The Industrial Court has also not taken any exception to this fact that the respondent employee was engaged by the licenced contractor. In fact, the evidence on record to this effect would only reveal that even according to respondent employee, he was engaged through the contractor. The contractor Prakash Rao himself was examined and he has clearly stated that he had engaged the respondent employee, who in turn, was engaged to work in the industrial establishment of the petitioner.

10. The issue would be whether in such a circumstance the petitioner could be treated as direct employer only on the basis that the petitioner was depositing the ESI contribution of the respondent. In this regard, it is appropriate to refer to the relevant provision contained in the Employees' State Insurance Act, 1948 imposing obligation towards deposit of ESI contribution of employees as contained in Section 40. The provision reads as under:

“40. Principal employer to pay contributions in the first instance - (1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provision of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise:

PROVIDED that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.”

11. It would, therefore, be seen that even if the occupier of the factory is not the direct employer but qualifies as a principal employer, he would be under statutory obligation to deposit ESI contribution. The definition of 'principal employer' under Section 2 of clause 17 of the Employees' State Insurance Act, 1948 is relevant which reads as under:

“S.2(17) “principal employer” means (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [the Factories Act, 1948(63 of 1948)], the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;”

12. The provision, therefore, widens the scope of the word 'principal employer' for the purposes of the Act is to ensure that the employer engaged in the establishment is benefited by the scheme of insurance making it obligatory even on the principal employer to deposit contribution though he may not be the direct employer and only the occupier or owner of the factory or managing agent of such owner or occupier or the legal representative of a deceased owner and occupier. Therefore, the only fact that the petitioner was depositing ESI contribution, by itself, without anything more, would not be decisive to hold that the petitioner was, in fact, the direct employer of the respondent employee. The Industrial Court has relied heavily on this particular circumstance to hold that the petitioner was the direct employer. However, while recording such a finding, the Industrial Court completely ignored the oral evidence on record which unmistakably shows that the respondent employee was engaged by the contractor. This would be clear from the testimony of witnesses Virendra Kumar Verma, B.P. Singh and K. Prakash Rao.

13. If the petitioner stands in the capacity of principal employer under the provision of the CLRA Act because in the establishment, employees have been engaged to work through a contractor duly licenced under Section 12 of the CLRA Act, though an enquiry could always be made whether such contract employer arrangement was sham or genuine, the provision of MPIR Act could not be taken recourse to in a manner which is inconsistency with

the statutory scheme of the CLRA Act while holding judicial enquiry as to whether there was a relationship of employer and employee between the petitioner and respondent No.1.

14. Thus, both the counts on which the Industrial Court recorded a finding that the petitioner was direct employer of respondent No.1 are not tenable in law.

15. The Industrial Court did not disturb the finding and has proceeded on the assumption that the respondent employee had not worked for 240 days. If that be so, even if it is assumed that the respondent was petitioner's employee, no relief of reinstatement could be granted on the ground that at the time of retrenchment, compensation was not paid. The entitlement to get retrenchment compensation at the time of retrenchment, accrues only when the employee has worked in the manner prescribed under Section 25(F) of the Chapter V-A of the Industrial Disputes Act, 1947 which has been made applicable in respect of scheduled industries under C.G.I.R. Act by virtue of provision contained in Section 110 of the C.G.I.R. Act.

16. The order of reinstatement by taking recourse to the provision of the Act of 1995 is also not sustainable in law in view of the decision of the Hon'ble Supreme Court in the case of *Dalco Engineering Private Limited (supra)*, wherein, it has been clearly held as below :

“25. It is clear that the legislative intent was to apply Section 47 of the Act only to such establishments as were specifically defined as “establishment” under Section 2(k) of the Act and not to other establishments. The legislative intent was to define “establishment” so as to be synonymous with the definition of “State” under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than government companies) are clearly excluded from the “establishments” to which Section 47 of the Act will apply.”

17. In the result, this Court is of the considered opinion that the order passed by the Industrial Court suffers from jurisdictional flaws, perversity and patent illegality. The impugned order is, therefore, set aside. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge