

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14320 of 2003

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1. M/S Bihar State Electricity Board, through its Secretary, Vidyut Bhawan, Bailey Road, Patna.
 2. General Manager-cum-Chief Engineer, Muzaffarpur, Thermal Power Station, Kanti, Muzaffarpur.

.... Petitioners

Versus

1. The State of Bihar, through Secretary, Department of Labour & Employment, New Secretariat, Patna-1
2. The Commissioner of Labour, Department of Labour & Employment, New Secretariat, Patna-1
3. Under Secretary, Department of Labour & Employment, New Secretariat, Patna-1.
4. The Joint Labour Commissioner, Govt. of Bihar, Patna.
5. The Deputy Labour Commissioner, Muzaffarpur.
6. Bihar Rajya Vidyut Parishad, Field Kamgar Union, Chiraiyatad, Patna.
7. Bihar Rajya Asangathi Mazdoor Congress through its Secretary, Kanti, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioners : Mr. V. N. Sahay, Advocate
Mr. Arun Srivastava, Advocate
For the Respondent No.6: Mr. Uma Kant Shukla, Advocate
Mr. Amrendra Kumar Singh No. 1, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-02-2018

Heard learned counsel for the petitioners and learned
counsel appearing for respondent no. 6.

2. In the present writ petition, the prayer of the petitioners



is for quashing the order of Labour Commissioner (respondent no.2) dated 15.02.2002 (Annexure-1) passed in a proceeding initiated for deciding the question of same wage and other facilities, as allowed to regular workers of Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur (for short 'MTPS') of the Bihar State Electricity Board (for short 'Board') for same or similar work rendered by the workers engaged as contract labours in MTPS and for fixation of wages, rates, holidays, hours of work and other facilities under Rule 25(2)(v)(a)(b) of the Bihar Contract Labour (Regulation & Abolition), Rules, 1972 (for short 'Rules, 1972') by which the Labour Commissioner has held that the contract workers are entitled for the wage at par with the regular employees, who rendered same and similar work.

3. The facts of the case, in brief, are that the Deputy Commissioner of Labour, Muzaffarpur had submitted a report vide his officer letter no. 891 dated 30.03.2001 to the Labour Commissioner, Bihar, Patna for initiation of a proceeding for deciding the question of same wage and other facilities for same or similar work rendered by the workers engaged as contract labour in MTPS for fixation of wages, rates, holidays, hours of work and other facilities under Rule 25(2)(v)(a) & (b) of Rules, 1972. On receipt of the report submitted by the Deputy Labour Commissioner,



Muzaffarpur, the Labour Commissioner, Patna being the Authority under the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'Act,1970') initiated a proceeding. After preliminary hearing of the parties concerned, the following five issues were framed by him:-

“(a) Whether the Labour Superintendent, who is the Registering Officer, is the only one competent to initiate any proceeding about contract labour ?

(b) Whether the Deputy Commissioner of Labour, Muzaffarpur is competent to submit a report with regard to contract labour?

(c) Whether the instant proceeding initiated under the Act, 1970 at the level of the Labour Commissioner is legal ?

(d) Whether the contract labourers are entitled to get the same wage and other facilities for the same work, as rendered by permanent workers ?

(e) Whether the Board is responsible as a principal Employer for the contract labour employed in the factory?”

4. The stand of the Management was that the Labour Superintendent is notified as Registering Officer to grant licence under the Act, 1970 by the Government of Bihar. Rule 25 of Rules,



1972 provides that for disagreement about 'same or similar nature of job', the matter will be referred to the Labour Commissioner by the Registering Officer whose decision shall be final. Therefore, it was the Labour Superintendent, who could have referred the matter to the Labour Commissioner in case of disagreement with the contractors regarding 'same or similar nature of job' and none else. Its further stand was that the Deputy Labour Commissioner could not have given any petition to the Labour Commissioner in respect of contract labour in view of the fact that there is no such provision under the Act, 1970. Its further stand was that since the Deputy Labour Commissioner is only an Inspector under the Act, 1970 and, for violation, he can take steps for implementation of the provisions of the Act, 1970 and the Rules, 1972 and he being not the Licensing Authority, could not refer the matter to the Labour Commissioner. Its further stand was that whether the contract labour is doing 'same or similar nature of job' as that of workers employed directly by the establishment is the duty and function of the State Advisory Board constituted under Section 4 of the Act, 1970, which has power to prohibit employment by issuing notification after considering the factors stated in Sections 10(2)(a) to (d) of the Act, 1970. The Labour Commissioner is not an Authority under the Act to decide wages, condition of same or perennial nature of job etc., which are



mentioned in Sections 10(2)(a) to (d) of the Act, 1970.

5. On behalf of respondent no. 6, it was pleaded that it is meaningless to say that Labour Superintendent, who is the Registering Officer under the Act, 1970 is the only competent person to refer the matter to the Labour Commissioner. It was contended that any worker affected, or any trade union representing the contract labour, or any officer of the Labour Department, who is responsible for implementation of labour laws or for checking the exploitation of the contract labour is competent to refer the matter under Rules 25(2)(v)(a) & (b) of the Rules, 1972. The Labour Superintendent, who is the Registering Officer under the Act can issue licence or revoke the licence under the purview of the Act, but he is not competent to decide the rates of wage of contract labours rendering the same or similar of works, as the workers employed directly. It was also stated that the workers and trade union have made a complaint that the workers engaged as contract labours in production or maintenance jobs, are rendering the same work as rendered by the workmen directly employed by the Management, but they are not getting the same wages or other facilities, as provided under Rule 25(2)(v)(a) & (b) of Rules, 1972. It was further contended that it is an established fact that there is dispute regarding the rates of wages and the workers have not been paid wages for past several months. It



was further submitted that the Labour Commissioner is competent to hear and decide the question of same wages for same work or any wage rate, hours of work, holidays and other condition of services of contract labour, who has been engaged in production or maintenance in the factory. It was also contended that the Assistant Provident Fund Commissioner had fixed the responsibility on Board as a principal employer to deposit the provident fund of contract labour. Accordingly, it is the responsibility of the Board to allow the same wage to the workers engaged as contract labours for the same work, as rendered by the workmen directly employed by the Management.

6. After hearing the parties, the Labour Commissioner, vide impugned order dated 15.02.2002, held that the workers engaged as contract labour to execute different jobs relating to production or maintenance in MTPS are entitled to be paid the wage and allowance as per Schedule-A of the Board's Notification No. 275 dated 24.10.2000. He further held that the Licensing Authority, after ascertaining the veracity of the claims made by the union with regard to employment of 585 contract labourers in same or similar nature of job after taking the objections of the employers, in this context, shall find out as to how many contract labourers have been actually engaged by the employer in same or similar nature of jobs. He shall also find out the exact date of engagement of each such



contract labourer. On the basis of computation made in the light of the above, the employer shall pay wages or arrears of wages to the contract labourers, as the case may be, from the date of their actual engagement in the factory, as per the provisions laid down in Section 21 of the Act, 1970. In the meantime, till the time the wages are revised, after due enquiry by the Licensing Authority, as directed above, the employer shall on the ad interim basis pay up-to-date monthly wages to the labourers at the rate at which they were getting paid, prior to the initiation of proceeding, as per provisions laid down in Section 21 of the Act. He further held that the employer cannot in the garb of giving minimum wages for a non-schedule employment unilaterally reduce the monthly emoluments of the contract labourers especially in the light of Rule 25(2)(iv) of the Rules, 1972. This payment was ordered to be made within 15 days of the passing of the order.

7. Assailing the impugned order dated 15.02.2002, learned counsel for the petitioners submitted that the present proceeding was initiated by the Deputy Labour Commissioner, Muzaffarpur, who is neither the Licensing Authority nor any Inspector under the Act, 1970. The Assistant Labour Commissioner is notified as Inspector under the Act, 1970. Therefore, the proceeding is illegal and without jurisdiction. He submitted that whether the contract labour is doing



the same or similar nature of job as that of workers employed directly by the establishment is the duty and function of the State Advisory Board constituted under Section 4 of the Act, 1970 and it has power to prohibit employment by issuing notification after considering the factors stated in Sections 10(2)(a) to (d) of the Act, 1970. The Labour Commissioner is not an Authority under the Act to decide wages, condition of same or perennial nature of job etc., which are mentioned in Sections 10(2)(a) to (d) of the Act, 1970. He submitted that the Labour Commissioner has wrongly assumed the jurisdiction under Rules 25(2)(v)(a) & (b) of the Rules, 1972. He submitted that without making any inquiry by the competent authority or hearing, the Labour Commissioner has decided the categorization and pay-scale of the contract labour, which is illegal and without jurisdiction. He also submitted that the Labour Commissioner did not issue notice or hear contractor, who has to pay the wages to the contract workers in terms of relevant Act and Rules, as the contractor is the immediate employer. He submitted that the award passed by the Labour Commissioner is not sustainable in law and, hence, the same should be set aside.

8. On the other hand, learned counsel appearing for respondent no. 6 submitted that the petitioners have no locus to challenge the impugned order in view of the fact that the said order



has not been passed against them and, therefore, they have no reason to be aggrieved by the said order. He submitted that by the impugned order, the petitioners have simply been made responsible to secure the rights and benefits of the contract labourers and, hence, the petitioners cannot assail the order on merit or even otherwise. He further submitted that even the writ petition does not contain any substantial question of law and the order passed by the Labour Commissioner does not suffer from any legal infirmity and, thus, the prayer made by the petitioners is fit to be rejected. He submitted that no where in Rule 25(2)(v)(a) of the Rules, 1972 provides that only the Licensing Authority can refer the issue of disagreement to the Labour Commissioner for final decision. According to him, the contention of the petitioners in this regard is self imaginary and totally misconceived. The State Government has appointed the Deputy Commissioner of Labour, Muzaffarpur to be the Inspector for the purposes of the Act, 1970 for the entire Saran and Tirhut Division. The power exercised by the Labour Commissioner under Rule 25(2)(v)(a) is not in conflict with the power to be exercised by the State Advisory Board under Section 10(1) of the Act, 1970. He submitted that the contention of the petitioners that the Labour Commissioner is not the Authority under the Act to decide the wages, condition of same or perennial nature of job etc. is incorrect.



The Labour Commissioner has been empowered to decide any disagreement or dispute, which may arise in regard to the subject matter of same or similar nature of job, as discussed in Rule 25(2)(v)(a) of the Rules, 1972. In the order dated 15.02.2002, the Labour Commissioner has not decided any issue, which is covered under Section 10(2)(a) of the Act, 1970. He submitted that an Inspector under the Act, 1970 is appointed for carrying out the purposes of the Act and in this capacity the Deputy Labour Commissioner, Muzaffarpur was fully within his jurisdiction and competence in terms of Rules 25(2)(v)(a) & (b) of the Rules, 1972 before the Labour Commissioner, Bihar, which culminated in passing of the final order dated 15.02.2002.

9. I have heard learned counsel for the parties and perused the record.

10. The object of the Act, 1970 is to prevent exploitation of contract labour and also to introduce better conditions of work. A workman is deemed to be employed as contract labour when he is hired in connection with the work of an establishment by or through a contractor. Contract workmen are indirect employees. Contract labour differs from direct labour in terms of employment relationship with the establishment and method of wage payment. Contract labour, by and large is not borne on pay roll nor is paid



directly. The contract workmen are hired, supervised and remunerated by the contractor, who in turn, is remunerated by the establishment hiring the services of the contractor. The Act, 1970 applies to the principal employer of an establishment and the contractor wherein 20 or more workmen are employed or were employed even for one day during preceding 12 months as contract labours. The Act enjoins several responsibilities on the principal employer and the contractor. The principal employer is required to ensure that the contractor pays the wages, as determined by the Government, if any, or pays the wages, as may be fixed by the Commissioner of Labour. Sub-section (4) of Section 21 of the Act, 1970 stipulates that in case, the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

11. By the impugned order dated 15.02.2002 passed by the Labour Commissioner, Bihar, it has simply been held that the workers engaged as contract labours to execute the different jobs



relating to production or maintenance in MTPS are entitled to be paid wages and allowances as per Schedule-A of the Board's Notification No. 275 dated 24.10.2000. Thus, by the impugned order, the petitioners as principal employer have simply been held responsible for securing the rights and benefits conferred on the contract labourers, which is in conformity with the statutory provision, as contained in sub-section (4) of Section 21 of the Act, 1970. As a matter of fact, the impugned order is against contractors, who are distinct from the petitioners, who are principal employers within the meaning, as defined under Section 2(g) of the Act, 1970. Only in case the contractor fails to make payment then the Principal Employer has been made liable to make payment of wages to the contract labourers and thereafter recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. Therefore, even in a situation where the Principal Employer is to directly pay wages to the contract labourer, the Principal Employer can recover it from the contractor. Hence, the petitioners have no reason to be aggrieved by the impugned order.

12. Submissions made on behalf of the petitioners that only if there is disagreement about same and similar nature of job, the matter will be referred to the Labour Commissioner by the



Licensing Authority is misconceived. It has nowhere been provided in Rule 25(2)(v)(a) of the Rules, 1972 that only the Licensing Authority can refer the issue of disagreement to the Commissioner of Labour for final decision. Similarly, the contention that the Deputy Labour Commissioner is not an Inspector under the Act, 1970 and, therefore, the proceeding, which was initiated by him is illegal and without jurisdiction, is also misconceived. In exercise of power conferred under Section 28 of the Act, 1970, the State Government, vide Notification bearing S.O. 1364 dated 29.12.1984, had appointed the Deputy Labour Commissioner to be Inspector for the purposes of the Act, 1970 for the entire Saran and Tirhut Division. Further, the power to be exercised by the Labour Commissioner under Rules 25(2)(v)(a) & (b) of the Rules, 1972 is not in conflict with the power to be exercised by the State Advisory Board under Section 10(1) of the Act, 1970.

13. The contention of the petitioner that the Labour Commissioner is not the Authority under the Act, 1970 to decide wage, condition of service or perennial nature of job etc. is also misconceived. In view of the statutory provision prescribed under Rule 25(2)(v)(b) of the Rules, 1972, the Labour Commissioner has been empowered to decide any disagreement or dispute, which may arise in regard to the subject matter of same or similar nature of



jobs.

14. The Labour Commissioner has not decided any issue, which is covered by Sections 10(2)(a) to (d) of the Act, 1970. The objections raised on behalf of the petitioners are, thus, totally misconceived and without any substance and is based on misreading of Rule 25(2)(v)(a) of the Rules 1972 and the other relevant provisions of the Act, 1970. No other substantial question of law has been raised in the present writ petition.

15. In that view of the matter, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2018
Transmission Date	NA

