

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6802 of 2001

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Indian Oil Corporation Limited, Barauni Oil Refinery, P. O. & P. S.- Barauni Oil Refinery, District- Begusarai through its Executive Director.

.... Petitioner

Versus

1. The Union of India,
Ministry of Labour, New Delhi, through its Secretary
2. The Presiding Officer,
Central Govt. Industrial Tribunal No. 1,
Dhanbad.
3. Sri Mohan Mahto, son of late Kashi Mahato
Or. No. E/2-221, Post- Refinery Township,
District- Begusarai

.... Respondents

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Appearance :

For the Petitioner : Mr. K. N. Gupta, Advocate
For Union of India : Mr. Kanak Verma, CGC
For respondent No. 3 : Mr. Apurva Kumar, Advocate
Mr. Utsav Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-02-2018

In the present writ petition, the petitioner has prayed for quashing the award dated 26.02.2001 passed by the Presiding Officer, Central Government Industrial Tribunal, No. 1, Dhanbad (for short 'Tribunal') in Reference No. 65 of 1995 whereby he has awarded that the Respondent No. 3 Shri Mohan Mahto



(hereinafter referred to as 'workman') is entitled for reinstatement as permanent employee on the post of messenger/peon but without back wages.

2. The Central Government by notification dated 21.06.1995, in exercise of power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act, 1947') referred the following dispute for adjudication by the Tribunal :-

“Whether the claim of the workman Shri Mohan Mahato is justified that he was an employee of Barauni Oil Refinery of Indian Oil Corporation Ltd. and that he was removed illegally from service w.e.f. 7.5.93 ? If so, to what relief is the workman entitled ?”

3. The case of workman before the Tribunal was that he was employed in the Power and Utilities Department of Barauni Oil Refinery of Indian Oil Corporation Ltd. (hereinafter referred to as 'management') on the wage of Rs.24/- per day by the Deputy Manager, Electrical Maintenance, Shri K. N. Tiwary and Senior Electrical Engineer, Shri Dharmbir Prasad on 11.05.1989. He worked under different officials as Helper, Peon and Dak Despatcher in the Power and Utilities Department of Barauni Oil



Refinery continuously from 11.05.1989 to 30.11.1992 without any break in service. He had worked continuously for 323 days without any break in the year 1991 and 333 days without any break in the year 1992. Since he was asked to carry the pilfered materials from P & U Stores to Contractor's store by the order of the Manager Maintenance, Electrical, Shri K. N. Tiwari and Shri Binod Kumar Sinha, S.C.I. Raw Store Keeper, P & U Stores and he refused to carry the pilfered materials, the aforesaid two officials get annoyed and on the plea of excess labour, he was terminated from service on 06.05.1993.

4. His further case was that he has not been paid the wages of worked period of April 1993 and part of May, 1993. Since he approached several times for the wages of the worked period, but all the times, the Manager, Electrical Maintenance, Shri K. N. Tiwari turned down his request. Hence, he appealed to the Executive Director, Barauni Oil Refinery of Indian Oil Corporation Ltd. by registered post on 09.07.1993 for payment and re-employment, but no action was taken on his request. Hence, he raised a dispute being terminated workman to Assistant Labour Commissioner (Central) and Conciliation Officer, Patna, whereafter, the reference, as stated above, was made to the



Tribunal.

5. The workman examined himself as WW-1 in evidence. He admitted that he worked under the management from 11.05.1989 to 30.11.1992. He had claimed for regularization of service with back wages, as no notice or retrenchment compensation was given to him at the stoppage from work. In cross-examination, he admitted that no letter of appointment was given to him and he knew Shri Shiv Balak Singh, a contractor. He was not paid for festival and holidays etc. The facilities given to regular worker were not allowed to him. He admitted that he had not mentioned in any paper filed by him that he was an employee of the management.

6. Apart from, his oral evidence, he has also relied upon certain documentary evidences, which were marked as exhibits W-1 to W-13, which have been brought on record, as Annexure-5 series.

7. The case of the management before the Tribunal was that the reference was bad in law for the reason that the appropriate Government was doubtful as to whether the workman was an employee of the management and as such there was no industrial dispute, as defined under Section 2(k) of the Act, 1947. Further his



status being doubtful, he was also not a workman under Section 2(s) of the Act, 1947. Hence, the appropriate Government had no jurisdiction to refer the dispute.

8. The further case of the management was that the workman was never employed by the management in any capacity. He was engaged by different contractors between 11.05.1989 to 30.11.1992 with breaks. His engagement with each contractor was a fresh appointment for him. Payments were made to him by the concerned contractors. The service conditions applicable for employees of the Corporation were never applicable to him nor he ever demanded and that there was no supervision/control of his conduct/work by any official of the Corporation.

9. The further case of the management was that necessary gate pass was issued by the CISF for some period, as requested by the concerned contractors for the employees engaged by them. As the workman was an employee of the contractor, he was issued a gate pass and also some advice slip by the department to facilitate entry and exit through gate no. 1, as he used to carry some files/documents, materials etc. relating to the work being done by the contractor.

10. The further case of the management was that since the



workman was never employed by the management, the question of his discharging continuous service in the refinery did not arise. With the termination of the contract, his service with the contractor stood terminated. Again, it could be a fresh engagement with another contractor if the contractor preferred to engage him. Even as a daily wager, his engagement used to come to an end at the close of the job on each date. Any regularization or direction of appointment to the management of such person would be in violation of Articles 14 and 16 of the Constitution of India. Even when a complaint was made for non-payment of his wages for some days, the payment was made by the contractor himself in presence of representative of the management.

11. On behalf of the management, Shri Shiv Balak Singh, Shri J. W. Kujur and Shri K. N. Tiwary were examined as M.W-1, M.W.-2 and M.W.-3 respectively. The copies of the oral evidences of the management and the workman have been brought on record and marked as Annexure- 4 series.

12. M. W.-1, Shiv Balak Singh, a contractor, has stated in his evidence that the workman had worked for sometime under him, thereafter, he used to work under some other contractors. He never worked in the refinery as an employee of the management.



When the workman was working under him, payment was made by him to the workman on payment slip. He further stated that gate pass was issued to the contractor's worker by the security officer for going inside the refinery. In cross-examination, he stated that the workman used to carry file from one office to another. He denied the suggestion that the workman was working as Messenger under the management.

13. M.W.2, J.W. Kujur had also supported the case of the management in his examination-in-chief. In cross-examination, he explained as to why the exhibits did not bear his signature. He stated that since the workman did not work under his supervision at any time and for that reason, the exhibits did not bear his signature.

14. Similarly, M.W.-3 stated that the workman was an employee of Shiv Balak Singh. He was paid wages by him. The refinery did not pay him any amount directly. In cross-examination, he denied the suggestion that exhibits W-2 to W-12 are the slips issued for the purpose of carrying contractor's file by the Workman to the administrative building. He admitted that in exhibits W-2 to W-12, there is no specific mention that the Workman was authorized to take only contractor's file. He stated that actually slips were issued as gate pass only and the security staff at gate



were not concerned to see actually what file is taken, therefore, there is no specific mention that they are contractor's file.

15. Apart from oral evidences, the management also produced certain documents, which were marked as exhibit M-1 to M-6. Exhibit M-2 is contractor's photo pass register in the name of Shri Shiv Balak Singh. Exhibit M-3/2 is the letter sent by the management to the Factory Inspector of Circle Begusarai in respect of non-payment of wages of 36 days of the workman wherein it was stated that the workman was never ever employed by the management and he was working on daily wages as contractor's workman. Exhibit M-4 is the money receipt to show that payment was made by contractor Shiv Balak Singh to the workman. Exhibits 5 and 5/1 mention the name of contractor's workman including the name of the workman.

16. On the basis of the aforesaid evidences and after hearing the parties, the Tribunal delivered its impugned award dated 26.02.2001 holding that the workman was an employee of the management and his removal from service with effect from 07.05.1993 is illegal. He is entitled to reinstatement but without back wages as permanent employee on the post of Messenger/Peon. The said award is under challenge in the present writ petition.



17. Mr. K. N. Gupta, learned counsel appearing for the management submitted that the reference was only about the claim of respondent no. 3 as to whether he was an employee of the management and whether he was illegally removed from service with effect from 07.05.1993. It did not include the question of his regularization as permanent employee of refinery, but in the award, the Tribunal had directed for his reinstatement as permanent employee, which is beyond the jurisdiction vested in the Tribunal.

18. He submitted that exhibit M-1 has incorrectly been appreciated by the Tribunal, as no where it mentions about cleaning and sweeping of the plant. It was not the case of the respondent no. 3 that he was doing cleaning and sweeping job in the plant, but the Presiding Officer of the Tribunal without applying his judicial mind held that exhibit M-1 related to sweeping and cleaning job at the plant. He submitted that while cross-examining the management witnesses, nothing could emerge to show that the workman was an employee of the management, but the Tribunal has wrongly appreciated the oral evidences and came to its finding on assumption and presumption. He submitted that reliance placed by the Tribunal upon W-1 to W-12 is also perverse, as those documents do not even remotely establish that the workman was an



employee engaged by the management. He submitted that documentary evidences adduced by the management clearly reflect that the workman was the employee of contractor Shiv Balak Singh, but the Tribunal erroneously set aside these documents only on the ground that he was required to lift into veil and pierce the veil and to see whether the contract system was real one or was a camouflage to disguise the real issue. He also submitted that with regard to license of the contractor and of the management as a principal employer under the Contract Labour (Regulation & Abolition) Act, neither any pleading was advanced by the workman nor any question in cross-examination was made to the management witnesses and erroneously an adverse inference has been drawn by the Tribunal against the management.

19. *Per contra*, Mr. Apurva Kumar, learned counsel appearing for the workman submitted that the findings of fact arrived at by the Tribunal, which was based upon proper appreciation of evidences cannot be gone into by this Court under writ jurisdiction. He submitted that findings arrived at by the Tribunal are neither perverse nor contrary to the record, but based on proper appreciation of evidences. He submitted that the Tribunal has not acted beyond the term of reference, as it has categorically



answered the reference with the claim of respondent no. 3 that he was an employee of the management and was illegally removed from service with effect from 07.05.1993. After reaching to these two findings, the Tribunal was also to see what relief could be granted to the workman and in that view of the matter, it awarded that the workman is entitled for reinstatement but without back wages. He submitted that the Contract Labour (Regulation & Abolition) Act is a beneficiary piece of legislation and the Tribunal was justified in interpreting the provision of the same in favour of the workman. He also submitted that the Tribunal has rightly concluded that the effect of non-registration of the principal employer or contractor possessing no licence is that the contractor worker must be treated to be employed under the principal employer.

20. In reply, Mr. K. N. Gupta, learned counsel for the management submitted that there is prohibition under the Contract Labour (Regulation & Abolition) Act to get even a job of permanent and perennial nature through a contractor either in office or outside the plant. It was not the case of the respondent no. 3 that he was doing the work of cleaning and sweeping in the plant nor there was the case that carrying files and materials as and when



required in the office was of perennial nature. He submitted that when respondent no. 3 himself had admitted that he had worked only till 30.11.1992, the question of his termination on 06.05.1993 did not arise. The finding that he continuously worked till 06.05.1993 is perverse and contrary to law. He submitted that when the findings of fact arrived at by the Tribunal is perverse and contrary to the record, the writ court should be justified in setting aside such award.

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

22. There is no dispute to the fact that if findings of fact arrived at by the Tribunal is based upon proper appreciation of evidence and is not perverse or contrary to record, the writ court would not be justified in interfering with the award.

23. As noticed above, in the present case, the workman in his oral evidence has simply stated that he worked at Barauni Refinery from 11.05.1989 to 30.11.1992. He admitted that no letter of appointment was given to him and he knew the contractor Shiv Balak Singh. He also admitted that he was not paid for festival and holidays etc. The facilities given to regular worker were not allowed to him. He admitted that he had not mentioned in any



paper filed by him that he was an employee of the management. When the workman himself admitted that he had worked only till 30.11.1992, in my opinion, there was no reason for the Tribunal to come to a finding that he had worked till 06.05.1993. Thus, such finding is totally perverse and contrary to the evidence on record.

24. The finding that job of area cleaning etc. was prohibited to be given to the contractor by Central Government and as such the workman would be deemed to be the employee of the principal employer is also perverse and contrary to exhibit M-1, as it was not even the case of workman that he was doing cleaning and sweeping job in the plant. The Tribunal manifestly erred in holding that exhibit M-1 related to sweeping and cleaning job at the plant.

25. The finding of fact arrived at by the Tribunal is further bad for the reason that it came to the conclusion that the workman continuously worked during period in question merely upon the statement of the workman, who had stated that he continuously worked for 2-3 years. When the management vehemently denied that the workman had never worked as management employee, onus was upon the workman to prove his continuous working. However, no cogent evidence was produced before the Tribunal by the workman in this regard. Exhibits W-1 to W-12 adduced by the



workman in evidence on which the Tribunal relied to reach to the conclusion that the workman was an employee of the management do not reflect any such thing on the basis of which such a finding could have been arrived at. These exhibits are recommendations of the officers of the management for issuing of gate pass to the workman. These are for different purpose and are also not in continuity. On the basis of these documents, it cannot be said that the workman was an employee of the management. In his deposition, M.W.-3 K. N. Tiwary fully explained the purpose to issue gate pass and contents thereof. However, the Tribunal has failed to appreciate the oral and documentary evidences led on behalf of the management and came to a perverse finding on hypothetical presumption and assumption for which no evidence was led before it. The documentary evidences produced on behalf of the management do suggest that the workman was an employee of the Contractor Shiv Balak Singh, but the Tribunal set aside these documents only on the ground that he was required to lift into veil and pierce the veil, as the same was a mere camouflage. It has drawn adverse inference only because no paper was filed showing any agreement with the contractor.

26. It has rightly been argued on behalf of the petitioners



that neither the issue in respect of licence of the contractor and of the company as principal employer under the Contract Labour (Regulation & Abolition) Act was pleaded by the workman nor any question in cross-examination was made to the management witnesses. When the issue itself was not raised by the workman and no opportunity of meeting the issue was ever given to the management in this regard, no adverse finding could have been given by the Tribunal against the management on this score. It is true that the Contract Labour (Regulation & Abolition) Act is a beneficial piece of legislation and it should be given widest possible meaning. However, it is equally true that a tribunal may draw adverse inference against the Management in case of non-registration of principal employer or non-licensing of the labour contractor, but for drawing such adverse inference, there has to be specific pleading in the written statement of the workman. In absence of any written pleading and in absence of any cross-examination of the witnesses of the management in this regard, the finding of the Tribunal deeming the workman, a contractor labour, as having become the employee of the principal employer, is erroneous in law.

27. In view of the discussions made above, the impugned



award dated 26.02.2001 passed by the Presiding Officer of the Tribunal in Reference No. 65 of 1995 is set aside. The application is allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2018
Transmission Date	NA

