

HIGH COURT OF CHHATTISGARH AT BILASPURWPL No. 3149 of 2007

Vice President (P&A), M/s. Grasim Cement, Post Grasim Vihar, Tah -
Simga, District Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary Labour Deptt., D.K.S. Bhawan, Raipur (C.G.).
2. Cement Workers Union, Through - Secretary, 25/45, Bramhanpara, Raipur (C.G.).
3. President, State Industrial Court of Chhattisgarh, Mahanadi Khand, Near D.K.S. Bhawan, Raipur (C.G.).

---Respondents

For petitioner	:	Shri N.K.Vyas, Advocate.
For resp.No.2	:	Shri Ravi Kumar Bhagat, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/10/2018

1. The challenge in the present Writ Petition is to the award Annexure-P/3 dated 12/03/2007 passed by the State Industrial Court, Raipur in reference case No. 04/CGIR/I/04.
2. The relevant facts for adjudication of the present dispute is that, the respondent No.2 - Union had raised a dispute before the State Authorities and which the State Government under Section 51-A of the Chhattisgarh Industrial Relations Act, 1960 made a reference to the Industrial Court, Raipur vide order dated 06/06/2003 Annexure-P/1 making the following terms of reference:-

“Whether the 69 contract labours whose names are enclosed in the schedule attached and who were working at the factory of Grasim Cement at Ravan and discharging the duties of Gypsum Unloading would be entitled for wages and benefits similar to the wages and benefits which are been paid to the department employees/workers engaged in the factory of Grasim Cement at Ravan?”

3. The said reference was registered before the Industrial Court as reference case No. 04/CGIR/I/04 and after due adjudication of the dispute, the Industrial Court vide award dated 02/03/2007 answered the reference as under:-

-SCHEDULE-

1. “Whether 69 contract workers shown in schedule 'B' doing the work of gypsum un-loading are entitled to same salary and facilities which are given to the other regular employee of the factory?

-ANSWER-

Yes.

-SCHEDULE-

2. If yes, what direction should be given to the employee?

-ANSWER-

Second party-Grasim Cement should be directed to pay same salary and give same facilities to these 69 workers also which are given by it to its regular employees. Amount shall be payable from 6.6.2003 the date of Reference.

Reference answered accordingly.”

4. It is this award which is under challenge in the present Writ Petition.
5. Though, the petitioner at the initial stage had raised various grounds of challenge including that of the maintainability of the dispute before the State Industrial Tribunal disputing the appropriate Government for redressal of the dispute.
6. However, in the light of the subsequent decision of the Division Bench of this Court, the petitioners now are not pressing upon that argument and only confined their argument challenging the impugned order on its merits.
7. The counsel for the petitioner at the outset submits that, the directives given by the Industrial Court in the impugned award is impracticable and is also contrary to the evidence which has come on record. He further contended that, even otherwise, the award which has been passed by the Tribunal also is beyond the scope of the terms of reference which was made to the Tribunal. He further contended that, all the workers attached whose names were attached with the terms of reference have not deposed before the Tribunal except for one and whose evidence alone cannot be totally relied upon for the purpose of adjudicating upon the claim particularly the monetary claim in respect of about 68 other workers. He further submits that, even otherwise, the statement of the sole employee examined also does not give any details in respect of the number of days that they have worked and till when they have worked so as to decide the actual benefit which could be given to each of the petitioners. He further submits that, there is an admission by the worker himself that beyond 2000-2001, the employer has

not engaged any manual labour for the unloading work and it was being carried out mechanically which would make the workers if at all if they are entitled for anything only till the date they have actually worked.

8. However, the Industrial Court has granted the relief to the petitioner making it prospective from the date of reference i.e. from 06/06/2003 onwards which otherwise cannot be enforced for the reason that, on the date of reference and beyond that period, these workers have not infact been engaged by the employer at all and for this reason, the finding of the Industrial Court does not seem to be proper, legal and justified and thus prayed for setting aside of the same.

9. The State counsel as also the counsel appearing for the respondent No.2 - Union submits that, even the sole worker who has been examined categorically stated that, he was discharging duties of Gypsum Unloading in the factory since long and that they were paid the benefits only that of contractual employees whereas they were infact entitled for the benefits of regular factory workers and therefore the finding of the Industrial Court cannot be said to be bad. They further contended that, even otherwise, the finding of the Industrial Court is to the effect that the management has not been able to adduce sufficient evidence before the Court to establish that beyond 2000-2001 the work of Gypsum Unloading was carried out by a mechanical process. That in the absence of any evidence led by the management, the finding of the Industrial Court does not warrant any interference and thus prayed for rejection of the petition.

10. Having heard the contentions put forth on either side and on perusal of record, what is relevant at this juncture to take note of is the terms of reference which has been made to the Industrial Court which has been enumerated in the preceding paragraphs.

11. The plain reading of the terms of the reference would clearly reflect that, all that the dispute which was referred was to pass the award to the extent of deciding whether the contract labour would be entitled for the wages which are being paid to the workers of the Company.

12. Under the circumstances, all that which was required on behalf of the workers is the actual date that they have worked with the employer and till what date they have actually worked and if they are able to establish the employment, then what benefit could be granted to the workers.

13. In the instant case, plain reading of the evidence of the worker would itself reveal that, the worker as such has not been able to produce sufficient material to show the actual number of days or any record with which could establish the period of engagement of these workers with which the calculation part could be done.

14. Moreover, there is a categorical admission on part of the worker himself of the company becoming mechanical so far as the process of Gypsum Unloading is concerned from the year 2000-2001.

15. This admission of the worker itself would give a clear inference that beyond the period of the process of Gypsum Unloading becoming mechanical there was no manual engagements for Gypsum Unloading.

16. The only silver lining in favour of the employee is the statement of the said employee who says that beyond 2000-2001, the workers manual labour were engaged only when the tippler used to get out of order which again would only reflect that the said circumstances also is occasional and is only when the tippler is out of order for which also there has to be specific evidence and deposition on behalf of the claimants to establish the actual number of days or the period till which they were infact engaged for the said work which again has not been substantiated by any of the witnesses.

17. Another aspect which has to be taken note of is the consequential relief which has been awarded by the Industrial Court as is reflected from the operative part of the award.

18. The Industrial Court has made the award prospective from 06/06/2003 i.e. from the date of reference onwards.

19. There are two things which can be drawn from the said findings of the Industrial Court. First is that, till 06/06/2003, the respondent-Union or the workers would not be entitled for any benefits and the benefits which would be payable to the worker would be only with effect from 06/06/2003 onwards.

20. The fact that the worker have stated that beyond 2000-2001, they have not been engaged itself establishes the fact that they were not engaged beyond that period or intermediate period subject to the verification, the award thus passed by the Industrial Court would not be beneficial in any manner to the workers.

21. Given the said facts and circumstances of the case, this Court is of the opinion that the findings arrived at by the Industrial Court does not seem to be proper, legal and justified and the same also is either impracticable or would be difficult in getting executed.

22. Thus, this Court is of the firm view that the said award needs to be revisited and it accordingly stands set-aside/quashed and the matter stands remitted back to the Industrial Court for a fresh adjudication of the entire dispute in terms of the reference made to the Industrial Court.

23. Needless to mention that, since the matter is now stands remitted back, either parties would have opportunity to lead any further evidence if they have in their possession to substantiate their respective claim and contentions.

24. With the aforesaid observation, the present Writ Petition stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit