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Ct-08

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RVW 48 of 2022
with
I.A No. CAN 1 of 2022
in
WPCT 60 of 2021

Bharat Sanchar Nigam Ltd. & Ors.
Vs.
Calcutta Telephone Contractors
Mazdoor Sangh & Ors.

Mr. Barun Kumar Sinha
Mr. Anirban Bose
Mr. Satyajit Senapati
... For the Applicants

Ms. Resmi Ghosh
Mr. Soumya Sankar Chini
... For the BSNL

This is an application for review of the order dated 6th September, 2021 at the instance of the Calcutta Telephones Contractors Mazdoor Sangh.

The genesis of the matter is that the writ petition filed by the applicants for realization of amounts payable to them by BSNL for the service rendered by them in connection with different works of BSNL.

On 6th September, 2021, after hearing the parties and to do complete justice to the parties, we directed the Contractor to submit all the bills that have remained unpaid till date to the writ petitioner no. 5 within a period of fortnight from date in order to enable the BSNL to release the admissible dues to the contractor within four weeks thereafter. The contractor was, in turn, directed to release the dues of the laborers within a fortnight thereafter.

In the writ petition it was never claimed that the relationship of employer and employee has

been established between BSNL and the members of the Mazdoor Sangh.

It appears that special leave petition was filed by the applicants against our order dated 6th September, 2021. In the special leave petition the following order was passed:-

“Learned counsel for the petitioners points out that the amount in terms of the order of the High Court has not been paid. He seeks permission to withdraw the special leave petition with liberty to move the High Court.

The special leave petition stands dismissed as withdrawn with liberty to the petitioner to move appropriate proceedings before the High Court as advised.”

Mr. Barun Kumar Sinha, learned counsel appearing for the applicants, submits that although the Hon’ble Supreme Court did not record any finding on the circular of the Government of India dated 3rd January, 2002 but such circular was brought to the notice of the Hon’ble Supreme Court and the applicants were permitted to withdraw the special leave petition with liberty to move an appropriate proceedings before the High Court as advised.

Mr. Sinha submits that the review application is the appropriate proceeding. However, we are unable to accept such submission in view of the fact that the Circular on which the reliance has been placed was available with the applicants and the same was never produced at the time of hearing. The applicants gave a different complexion to the dispute by raising issues that were never raised before the Tribunal nor before the division bench. The arguments put forward now is not on the basis the circular of the Government of

India dated 3rd January, 2002 that there cannot be any appointment of any contract labourer. It is argued that by reason of elimination of contractor, BSNL has now become the principal employer and as a principal employer BSNL is duty bound to pay wages to members of the contractors of Mazdoor Sangh who claimed to have performed their duties for the last several years.

Admittedly, no industrial dispute was raised contemporaneous to the circular dated 3rd January, 2002 and the record would reveal that BSNL had never accepted the members of Mazdoor Sangh as employee of BSNL. What would be the implication of the circular dated 3rd January, 2002 was never raised by Mazdoor Sangh in any of the earlier proceeding, although it was open for them to claim the status, which could be a permanent nature on the basis of the circular dated 3rd January, 2002, provided all other conditions are satisfied. This factual examination is not possible in the review application. The applicants, in fact, admitted to have received payments from some agencies appointed by the BSNL. Whether the status of the petitioner is that of a contract labour is required to be decided in an appropriate proceeding before any relief could be claimed by the petitioner.

Ms. Resmi Singh, learned counsel appearing for the BSNL, submits that Mr. Sinha is not aware of the fact that in an earlier proceeding

between another section of the workers union the circular dated 3rd January, 2002 and Government Notification dated 6th February, 2002 came up for consideration and upon

consideration it was decided against the Contractor's Workers Union of BSNL (Calcutta Telephone). This issue is no more res integra. However, since we are not deciding such issue in this proceeding, in the event any proceeding is initiated by the present applicant based on such circulars it would be open to BSNL to rely on orders passed in such proceedings.

Under such circumstances, we do not find any reason to review our order. If any legal right is available to the applicants to claim relief under any other statute this order shall not preclude the applicant to seek such relief as they may be advised.

In view of the above RVW 48 of 2022 is disposed of.

In view of disposal of the review application nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is accordingly disposed of.

(Hiranmay Bhattacharyya,J.)

(Soumen Sen, J.)

