Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 24376 of 2014
With
IA No. CAN 2 of 2019 (Old No. CAN 5270 of 2019)

Sri Buddhadev Maity
Versus
Union of India & Ors.

For the petitioner	:	Mr. Palash Mukherjee, Mr. Aditya Sen,
For the respondent nos. 1 to 3	:	Mr. Soumya Majumder, Ms. Sharmistha Ghosh, Mr. Victor Chatterjee, Mr. Amit Ghosh,
Heard on	:	07.07.2023, 20.11.2023, 01.12.2023, 13.12.2023 & 15.12.2023.
Judgment on	:	**18th December, 2023**.

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the order dated 29th May, 2014 passed by the respondent no.11; as also for an order directing the respondent nos. 1 to 4 to compute the differential salary/wages as payable to the petitioner in terms of Rule 25(2)(v)(a) of Contract Labour (Regulation & Abolition), Rules, 1971 (hereinafter referred to as the "said Rules"), with a

further direction upon the respondent nos. 8 to 11 to pay the same.

2. The petitioner claims that the petitioner is a former employee of the respondent nos. 9 and 10 owned and operated by the respondent nos. 1 and 2. He claims to have rendered uninterrupted services with the respondent nos. 9 and 10 at their Haldia Refinery from 1985 till 13th March, 2011, when the petitioner was allegedly driven out by way of refusal of allotment of duties. According to the petitioner although, he was working directly under the supervisions of the respondent nos. 10 to 12, he was shown to be engaged through Contractors.

3. It is the petitioner's case that despite the fact that the petitioner was discharging the same duties as his counterparts who are on the rolls and despite the nature of work being perennial, the counter parts of the petitioner who are regular worker of the respondent nos. 8 to 12, were being paid their salaries in the scale of pay as determined by the Competent Authority. However, in the case of the petitioner, the same was being denied. In the circumstances as aforesaid, the petitioner had demanded equal pay for equal work and similar salary including allowance as paid to the regular employees of the respondent nos. 8 to 12.

4. The petitioner contends that the respondent no. 1 is the nodal Ministry which is responsible for the supervision of the affairs of the respondent nos. 3, 4, 5 and 13 and the respondent no. 1 is

also entrusted with the duty to supervise and issue guidelines and directions to the respondent nos. 9, 10 and 11 for implementation of the provisions of Rule 25(2)(v)(a) of the said Rules, along with the other provisions of law as are applicable. Since, the petitioner was working against permanent and perennial nature of the work under various contractors who are respondent nos. 14 to 24, as a contract labourers, the petitioner had made a representation to the Secretary, Government of India, Labour Department on 25th June, 1986 for abolition of the contract Labour System (CLS) under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred to as the "said Act"). The petitioner had thereafter, made an application under Rule 25(2)(v)(a) of the said Rules on 24th August, 1988, *inter alia*, for payment of equal wages, before the Chief Labour Commissioner.

5. On the basis of the petitioner's application, an investigation was carried out and a report was prepared by the Office of the Labour Enforcement Officer (Central) Kharagpur. Incidentally, the Government of India vide order dated 2nd June, 1992 decided not to prohibit employment of contract labour in the respondent nos. 8, 9 and 10 and had directed the said respondents to regulate wage rates and other conditions of service of the workmen in terms of Rule 25(2)(v)(a) of the said Rules and to ensure that the workmen get the same benefits/facilities as are available to the

regular employees. Such fact would corroborate from the order dated 2nd June, 1992.

6. Challenging the aforesaid order dated 2nd June, 1992 passed by the Central Government, the petitioner along with some of the workmen had approached the Hon'ble High Court of Delhi at New Delhi in WP (C) 5532 of 2003. The Hon'ble High Court of Delhi at New Delhi, by its order dated 14th May, 2010 was, *inter alia,* pleased to quash the said order passed by the Central Government as the same was passed without consultation of the Central Advisory Board and was not in accordance with the Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short, the "said Act"). By the said order the Hon'ble High Court of Delhi at New Delhi had also directed the Central Government to take a decision in the matter in accordance with law, within a period of 6 months from the date of receipt of the petitioner's representation.
7. In the interregnum, the petitioner in his capacity as the General Secretary of the Union had made a representation dated 2nd July, 2008, *inter alia,* praying for equal payment for equal work. The petitioner had subsequently through the Union approached the Hon'ble Supreme Court of India for appropriate orders in relation to equal pay for equal work under Rule 25(2)(v)(a) of the said Rule. However, such petition was withdrawn in order to approach the Hon'ble High Court. Such fact is recorded in the order dated 30th

April, 2010 passed by the Hon'ble Supreme Court in WP No. 158 of 2010.

8. In the meantime, the Government of India vide the notification dated 28th February, 2011 had prohibited the employment of contract labour in the works of normal maintenance, repair of emergency shut downs and operation works, except for annual turn around in the Mechanical Division of Haldia Refinery of Indian Oil Corporation Limited (IOCl).

9. In furtherance to the aforesaid notification, the contractor had called upon the petitioner to deposit the gate pass and the employment card as the contract against which he was working had been suspended. The petitioner was not allowed to resume his duty thereafter, with effect from 13th March, 2011. In the meantime, by an order dated 18th December, 2013 passed in W.P. 1806 (W) of 2012 a Co-ordinate Bench of this Hon'ble Court, at the instance of one Sri Sankar Jana and the petitioner, had directed the respondent no.11 to go into the issue as to whether the employment of the petitioners to such petition were directly under the IOCL, and their right to be appointed as regular employees.

10. Pursuant to the aforesaid order respondent no. 11 has since, by an order dated 29th May, 2014, which is impugned in the present writ petition returned the finding that the question of regularization of employment does not arise, however, if they apply

their case would be considered for appointment in accordance with law.

11. Although, the instant writ petition has been filed, *inter alia,* challenging the aforesaid order and praying for regularisation, however, at the time of hearing of the instant writ petition, Mr. Mukherjee, learned advocate representing the petitioner, on instruction, has submitted that the claim of the petitioner is now confined to the differences of pay that the petitioner may be entitled to in terms of Rule 25(2)(v)(a) of the said Rules. In support of his contention, he has placed reliance on a report of the RLC which is at pages 53 of the writ petition. It is submitted that the Office of the Regional Labour Commissioner has already by taking into consideration all aspects, in his aforesaid report dated 31st December, 1990 and had concluded that there is no difference between the Shramiks and casual helpers/ workers, in the matter of training and has also observed that both Shramiks and casual helpers/ workers of the maintenance department are performing same and similar nature of job. Both the Shramiks and the casual helpers are helping and assisting technicians in performing their job. Such finding was reached on the basis of an enquiry, conducted by the Office of the Regional Labour Commissioner. The said report further records that although, the management tried to make out a case that the refinery does not require the service of the casual workers but the management in order to maintain good

industrial relations had retained them. That the IOCl is party to the said enquiry and cannot wriggle out therefrom. By referring to page 116 of the writ petition, it is submitted that the demand of the petitioner is now confined to the difference of pay that the petitioner may be entitled to, based on the report prepared by the Regional Labour Commissioner prepared under Rule 25(2)(v)(a) of the said Rules.

12. By placing reliance on Section 21(4) of the said Act, it has been submitted that it is the obligation of the principal employer to ensure that the contractor makes payment of wages within the prescribed period and in case of non-payment or short payment 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, with a right to 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. According to Mr. Mukherjee, the aforesaid provisions read with Rule 25(2)(v) of the said Rules makes it obligatory for the principal employer to ensure that the rates of wages payable to the workman by the contractor is not less than the rates prescribed under the Minimum Wages Act,1948, for such employment where applicable and where the rates have been fixed by agreement, settlement or award by the appropriate Government, not less than the rates so fixed. The

corresponding obligation to ensure compliance of the provisions of Rule 25(2)(v) of the said Rules by the principal employer cannot be ignored, and carries with it, the obligation to pay the differential sum where ever applicable. By referring to the definition of wages in Section 2 sub-section (h) of the said Act, it is submitted that wages shall have the meaning assigned to it in Clause (vi) of Section 2 of the Payment of Wages Act, 1936.

13. In this case, the principal employer having failed to comply with its obligations of ensuring compliance of Rule 25(2)(v) of the said Rules, cannot evade the corresponding responsibility to pay the differential sum, especially when, the differential sum can be recovered by the principal employer as a debt.

14. In support of his contention, reliance has been placed on the following judgment in cases noted hereinbelow:

i. ***Chemical Mazdoor Panchayat v. Indian Oil Corporation Ltd. & ors.***, reported in **(2018) 16 SCC 25**,

ii. ***Uttar Pradesh Rajya Vidyut Utpadan Board & Anr. v. Uttar Pradesh Vidyut Mazdoor Sangh***, reported in **(2009) 17 SCC 318.**

iii. ***The Fertiliser Corp. of India Ltd., v D.D.J. Gorakpur &Orthers. Unreported judgment delivered by the Hon'ble High Court of Judicature at Allahabad on 14th July 2017, in WRIT C No 6292 of 2002.***

15. *Per contra,* Mr. Majumder, learned advocate appearing for the respondent IOCl, submits that the petitioner was admittedly a contract labour, working under the contractors of IOCl. Although, the original claim of the petitioner was for regularization, however, the petitioner now seeks enforcement of the report prepared by the Regional Labour Commissioner (Central) prepared under Rule 25(2)(v) of the said Rules. Mr. Majumder does not question the said report, he only questions the enforceability of the said report against IOCl, as the principal employer, and objects to IOCl being made liable for payment of the differential sum, if at all.

16. By placing reliance on Rule 25 of the said Rules, it is submitted that the same has been framed only for the purpose of lying down the terms and conditions of license obtainable by a contractor under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970. The same will appear from harmonious reading of Rule 25 of the said Rules. The specific language employed in Rule 25 of the said Rules is "Forms and terms and conditions of license". The Chief Labour Commissioner (Central) determines such conditions of license by dint of Rule 25(2) of the said Rules read with its explanation. Such determination of conditions of license of contractor for employment of a contract labour, is only enforceable against the contractor for the purpose of obtaining license under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970. If such report under Rule

25(2)(v) is enforceable against the principal employer then the very essence of the "Industrial Disputes" as defined in Section 2(k) of the Industrial Disputes Act, 1947, will be demolished. In any event, it is submitted that non-payment of determined conditions of service/wages by a contractor to a contract Labour in terms of determination made by the Chief Labour Commissioner, may give rise to the consequence of cancellation of license of the contractor and the corresponding right to a contract labourer to enforce such report by filing an application under Section 33(C)(2) of the Industrial Disputes Act, 1947, as against the contractor.

17. Section 21(4) of the Contract Labour (Regulation and Abolition) Rules, 1970 has no application in the context of Rule 25(2)(v)(a) of the said Rules. As such, the same will not attract the liability of the principal employer.

18. In support of his contention, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Hindustan Steel Works Construction Ltd. v. Commissioner of Labour & Ors.***, reported in **(1996) 10 SCC 599** and the judgment delivered by the Hon'ble High Court of Gujarat at Ahmedabad in the case of ***Indian Oil Corporation v. Chief Labour Commissioner (Central)***, reported in **MANU/GJ/1644/2018**.

19. Having regard to the aforesaid, he submits that even if the aforesaid report of the Chief Labour Commissioner is enforceable as against the contractor, the same cannot be enforced against the

IOCl as the principal employer. The petitioner, thus, cannot be entitled to difference of pay or to any relief as against IOCl.

20. Heard the learned advocates appearing for the respective parties and considered the materials on record.

21. Admittedly, the petitioner was engaged as a contract labour. It is not in dispute that the petitioner was performing perennial nature of job. It is also not in dispute that the appropriate Government vide notification dated 28th February, 2011 had prohibited the employment of contract labour in the works of normal maintenance, repair of emergency shut down and operation works, except for annual turn around in the Mechanical Division of Haldia Refinery. It is immediately thereafter that the petitioner was called upon by its contractor to deposit the gate pass and was thereafter, not permitted to resume duties with effect from 13th March, 2011.

22. It is the petitioner's case that at the instance of the petitioner and other workmen, an enquiry had been conducted under Rule 25(2)(v)(a) of the said Rules by the Regional Labour Commissioner, who upon comparison, evaluation of work, nature of work, duties and responsibilities of the workmen employed by the contractor and those employed by the principal employer had prepared a report dated 31st December, 1990 holding that the nature of the job of the workmen employed by the contractor and those employed by the principal employer were same and similar.

23. Although, Mr. Majumder representing the IOCl, does not dispute the correctness of the report, he objects to the liability of the IOCl to pay the differential sum, if any. According to him, the provisions of Rule 25(2)(v)(a) of the said Rules, which authorizes the Chief Labour Commissioner (Central) to determine conditions of service of a contract labour, is only enforceable against a contractor for the purpose of obtaining license under Section 12 of the said Act. The said determination cannot be enforced against a principal employer. Section 21(4) of the said Act, does not cover the obligations, which are imposed upon a contractor under the provisions of the said Rules read with the definition of wages in Payment of Wages Act, 1936. The obligations of the principal employer under Section 21(4) of the said Act does not cover any additional amount that may be found due and payable under Rule 25(2)(v)(a) of the said Rules.

24. To morefully appreciate the aforesaid argument, it would be relevant to consider the provisions of Section 21(4) of the said Act and Rule 25(2)(v)(a) of the said Rules. The same are extracted herein below:

> "***21(4) –*** *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."

"***25(2)(v)(a)*** *--in cases where the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work:*

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Deputy Chief Labour Commissioner (Central);

(b) *in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Deputy Chief Labour Commissioner (Central);*

Explanation. – While determining the wage rates, holidays, hours of work and other conditions of services under (b) above, the Deputy Chief Labour Commissioner (Central) shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments;"

25. I also notice that the Hon'ble Supreme Court in the case of ***Hindustan Steelworks Construction Ltd.*** (supra) in paragraph 13 and 14 of the judgement while considering the provisions of section 21(4) of the said Act, viz a viz the liability of the principal

employer to pay to the contract workers any amount which constitutes the difference between the wages payable to the contract labour by the contractor and the wages paid by the principal employer to its own employees doing similar work, had been pleased to observe as follows:

> ***"13.*** *The short question that arises for determination is whether the appellant who is the principal employer is liable to pay to the contract workers any amount which constitutes the difference between the wages payable to the contract labour by the contractor and the wages paid by the appellant to its own employees doing similar work. The Division Bench seems to have relied upon Section 21(4) of the said Act for this purpose. Section 21(1), however, provides that the contractor shall be responsible for the payment of wages to each worker employed by him. Section 21(4) provides that if the contractor fails to make this payment or any part thereof, the principal employer is liable to make this payment and may recover the same from the contractor as set out in that sub-section. Looking to the definition of wages under the said Act read with the definition of wages in the Payment of Wages Act, which we have set out earlier, it is clear that Section 21 only deals with the payment of contractual wages by the contractor to each of his workers. The definition of wages would cover within its scope, inter alia, also those amounts which the contractor is liable to pay to his workers under any award, settlement or order of court as well as other amounts falling within the definition of 'wages' under the Payment of Wages Act. Sub-section (2) provides for a representative of the principal employer supervising*

this payment. Clearly, therefore, the wages which are the subject-matter of Section 21 are specified sums which are payable in praesenti by the contractor under the terms of his contract of employment with each worker as well as under any existing award, settlement or order of the court. Section 21 does not deal with, nor does it cover the obligations which are imposed upon a contractor under the provisions such as the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Hence Section 21(4) will not apply to such obligations of the contractor which may be the subject-matter of dispute between the contractor and his workers at the time of disbursement of wages and which do not fall within the definition of 'wages' under the Act.

14. *Rule 25 of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 imposes on the contractor certain conditions subject to which a licence is granted to him. One such condition is to the effect that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers which do the same or similar kind of work. This is a condition of the contractor's license. There is no provision under these rules by which the principal employer is made liable for payment in the event of non-compliance by the contractor with this condition. If the contractor commits a breach of the conditions of his licence he alone will take the consequences. The right of the workers to recover any additional wages which may be so determined would be against the contractor. Section 21(4) has no application to a situation where a* *contractor may have paid the wages but has not complied with the condition imposed by Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. The definition of wages under Section 2 of Contract Labour (Regulation and Abolition) Act, 1970 read with the definition of wages under the Payment of Wages Act, 1936, does not cover any additional amount found payable under Rule 25(v)(a) if the principal employer has its own workers doing similar work. If the principal employer does not have any employees doing similar work that question will not arise. Such contingencies are not covered by Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractor cannot recover any such additional amount from the principal employer under Section 21(4). Significantly, in the present proceedings the workers are not a party at all. It is the contractor who sought to quash a finding given by the Commissioner of Labour under the proviso to Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. In the present appeal before us also the contract workers employed by the fourth respondent are not a party. The dispute is between the contractor and the principal employer. We are, therefore, not called upon to pronounce on the rights of the contract labour employed by the fourth respondent to recover these amounts. The appellant, however, who is the principal employer, is not liable to pay this additional amount under Section 21(4). The appellant would, however, be liable under Section 21(4) to pay to the workers any difference between the wages contracted for under its agreement with the fourth* *respondent-contractor and the lesser wages actually paid by the contractor to contract labour, and recover the same from the contractor."*

26. Although, in the aforesaid judgment, the workers were not parties and the dispute was confined to the contractor and the principal employer and though, the Hon'ble Supreme Court was not called upon to pronounce on the rights of the contract labour employed by the contractor, however, the Hon'ble Supreme Court in clear and in no uncertain terms, had observed that the principal employer shall not be liable to pay the additional amount under Section 21(4) of the said Act, but shall only be liable to the extent of any difference between the wages contracted for in its agreement with the contractor or the lesser wages paid by the contractor to the contract labourer and to recover the same from the contractor. The obligation under section 21 of the said Act, being limited to payment of wages, the term wages for the purpose of section 21 of the said Act, is therefore, limited to contractual wages. The same view has been taken by the Hon'ble Gujarat High Court. Admittedly, this is not a case where the petitioner seeks to enforce the contractual terms as regards the payment of wages between the contractor and the petitioner as against the principal employer or claims that he has been short paid by the contractor. The petitioner in fact seeks the differential amount which the contractor would be liable to pay by implementing the report of the Regional Labour Commissioner and by relying on Section 21(4) of

the said Act and Rule 25(2)(v)(a) of the said Rules, seeks enforcement thereof, against the principal employer.

27. Having regard to the aforesaid, I am of the view that the IOCl cannot be made liable for payment of the differential amount, if any, on the basis of the report prepared by Regional Labour Commissioner in terms of the enquiry initiated under Rule 25(2)(v)(a) of the said Rules. The judgments relied on by the petitioner in the case of ***U.P. Rajya Vidyut Utpadan Board & Ors.*** (supra) and the ***Chemical Mazdoor Panchayat*** (supra), does not deal with the issue as regards the obligations of the principal employer to make payment of the differential amount as aforesaid. The judgment delivered in the case of ***The Fertilizer Corp. of India Ltd. (supra)*** is a challenge arising out of an order passed by the Additional District Judge, Gorakhpur in his capacity as the Appellate Authority under Section 15 of the Payment of Wages Act,1936. The same does not assist the petitioner.

28. The petitioner in the instant case has not been able to identify particulars of the contractors with specific dates under whom the petitioner had worked, at least no arguments were advanced with reference to the same. Having regard to the aforesaid, it is not possible for this Court in exercise of extraordinary writ jurisdiction to direct the contractors to make payment, especially when a determination as regards the differential amount payable if any, is yet to be made. As such, I am of the view the petitioner cannot be

entitled to any relief in this proceeding. The aforesaid judgment shall, however, not stand in the way of the petitioner to make an appropriate application before the Tribunal/ appropriate authority, if so advised. It is, however, made clear that if such application is made within 3 months from the date, the same shall be considered by the Tribunal/ appropriate authority on merits in accordance with law.

29. With the above observations/directions, the writ petition being WPA 24376 of 2014 stands disposed of.

30. Since, the instant writ petition has been disposed of, the connected application being CAN 2 of 2019 (Old No. CAN 5270 of 2019), *inter alia*, praying for analogous hearing of WP 14070 (W) of 2011 and WP No. 5108 (W) of 2011 with the instant writ petition, having become infructuous is accordingly dismissed.

31. There shall, however, be no order as to costs.

32. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)