

Court No. - 6

Case :- WRIT - C No. - 1006996 of 2014

Petitioner :- Union Of India Thru General Manager North Eastern Railway

Respondent :- Jai Prakash Dixit And Another

Counsel for Petitioner :- Chandra Shekhar Sinha, Saurabh Misra

Hon'ble Alok Mathur, J.

1. Heard Sri Saurabh Mishra, learned counsel for the petitioner. No one appears for the respondents.

2. By means of present writ petition the petitioner has challenged the award dated 24.02.2014, passed by the Central Government Industrial Tribunal - cum- Labour Court, Lucknow in Case ID No. 32 of 2007.

3. It has been submitted by learned counsel for the petitioner that it was asserted by respondent no. 1 – workman that he was engaged as a labour on daily wage basis in 1983 when around 400 labourers were engaged by the petitioner for repairing railway track which has been damaged. It was stated that he had worked for 222 days and other workmen who were engaged alongwith respondent no. 1 have been granted status of temporary workmen and were still working on regular basis. It was asserted by respondent no. 1 that he was entitled for grant of temporary status as he had completed 120 days and has not been regularized after screening. The grievance raised by the workman was that instead of granting him temporary status, the petitioners have terminated his services.

4. It is in the aforesaid circumstances that a labour dispute was raised and reference was made for adjudication before the Central Government Industrial Tribunal - cum- Labour Court, Lucknow (*hereinafter referred to as "the Labour Tribunal"*) and question which was referred for adjudication was as to "whether action of Management of North East Railway in not giving temporary status to the workman Sri Jai Prakash Dixit even though he completed 120 days and termination his services w.e.f. 13.07.1994 is justified? If not, to what relief he is entitled?

5. The workman in support of his claim has produced oral and documentary evidence indicating that he had worked for 222 days. He had examined himself as well as one Lalita Prasad – Office Superintendent in support of his claim and said witnesses

were also cross examined by the petitioner. The petitioner has opposed the claim of the workman has stated that he was never employed directly by the petitioner and infact was engaged through contractor M/s Uttam Shram Samvida Samit. It was stated that wages to the labourers was paid by the said company.

6. The Tribunal while considering the rival submissions has recorded the finding that according to the workman he had worked for 222 days while as per documents relied upon by the Management the workman has worked for 122 days with three days break and as such even as per the documents submitted by the petitioner he had worked for 119 days. The petitioner/Management could not demonstrate before the Labour Court that the workman had been engaged through contractor namely M/s M/s Uttam Shram Samvida Samit and no document in this regard were produced before the Labour Trubunal. It is in the aforesaid facts the Labour Tribunal was satisfied that the workman had worked for more than 120 days continuously and had completed mandatory period for grant of temporary status. While allowing the claim of the workman the Tribunal returned finding that the workman was entitled for grant of temporary status with effect from 15.04.1985 and his termination with effect from 13.07.1994 was illegal and unjustified and ordered his re-instatement alongwith other consequential benefits.

7. Learned counsel for the petitioner while assailing the impugned order dated 24.02.2014, passed by the Labour Tribunal has submitted that the Tribunal has not appreciated the facts asserted by the petitioner and consequently the impugned order deserves to be interfered with in exercise of power under Article 227 of the Constitution of India. He has stated that it was always stated before the Labour Tribunal that the workman had never worked as an employee and consequently was not entitled to be granted status of temporary employee. He has submitted that even otherwise he has not worked for more than 120 days and was not entitled for grant of status of temporary employee and it was further stated that as he was never an employee of the petitioner and his services were never terminated by the petitioner.

8. Considering the submissions raised by learned counsel for the petitioner, this Court has gone into the written statement filed by the petitioner before the Labour Tribunal. It has been stated in the additional pleas that due to work pressure, in 1993 labourers were engaged on contractual basis. It has been further stated that the labourers who have fulfilled requirements were granted temporary status and those who had not fulfilled the requirements left the job. In paragraph 55 they have admitted

that respondent no. 1 – workman had worked in certain unit of Engineering Department as casual labour on daily wage basis on sanctioned extra labour requisition. The respondent no. 1 did not fulfilled the necessary requirements for granting temporary status to his service.

9. Perusal of aforesaid written statement filed before the Labour Tribunal clearly indicates that the petitioners themselves have admitted before the Labour Tribunal that workman had worked on daily wage basis. Simultaneously they have taken plea that the workman was engaged by a private contractor who had left his service with the petitioner. This stand seems contrary to the record and not liable to be relied upon, considering that the petitioner have themselves in their written statement conceded the fact that the workman had worked in the Engineering Department as casual labour.

10. Next contention is with regard to number of days the workman has worked as casual labour. The petitioner has demonstrated by various letters and documents that workman had worked for 122 days as casual labour. In this regard on behalf of petitioner one Lalta Prasad who was office superintendent in the office of Assistant Engineer, North Eastern Railway, Malani, has stated, when he was confronted with his own document numbered as paper no. 3/26, wherein he himself has certified that the workman had worked for 226 days. Lalta Prasad, Office Superintendent did not deny his signatures but only stated that signatures were not apparent.

11. The Labour Tribunal while returning finding in favour of petitioner with regard to number of days the workman had worked took into account the documents of the petitioner being paper no. 22/01, which indicates that the workman had worked for 122 days with break of three days. Even the documents of the petitioner as relied upon, it is evident that the workman had worked for 119 days which is only short of one day which is mandatory for grant of temporary status.

12. Undoubtedly the petitioner either before the Labour Tribunal or before this Court has been unable to demonstrate that the workman was engaged through private contractor and there is no dispute with regard to the finding returned by the Labour Tribunal that the workman in the present case would be deemed to have been employee of petitioner.

13. Considering the aforesaid material and evidence, this Court is of the considered view that the Labour Tribunal after considering the entire material has returned finding in favour of workman. The workman though had failed to demonstrate that he had worked for more than 120 days as casual labour and was duly entitled to be granted status of temporary workman. The

petitioner also could not demonstrate that work had been taken though private contractor. Further this aspect has also been admitted that all the casual labours who had worked for more than 120 days have been given status of temporary employee and in this regard also the petitioner has failed to demonstrate that the workman had worked for less than 120 days, hence the workman was legally entitled to be granted status of temporary employee.

14. Considering the above, this Court is of the view that there is no infirmity in the order passed by the Labour Tribunal. In the light of above, no interference is called for in the impugned order.

15. The writ petition being devoid of merits stands dismissed.

Order Date :- 2.1.2024

A. Verma

(Alok Mathur, J.)