

16.05.2025
Item No.7
Ct. No. 30
Aloke

WPA 8820 of 2025

**Ajay Tiwari & Ors.
Vs
Union of India & Ors.**

Ms. Malabika Saha
Ms. Ahipha Khan
... for the petitioners

Mr. Brijendra Pratap Singh, Id. Sr. Adv.
Mr. Sachit Talukdar
... for the respondent no. 1/UOI

1. Affidavit-of-service filed be kept with the record.
2. In spite of being served the respondent nos. 5 to 9 are not being represented.
3. The present writ application has been preferred praying for direction for reinstatement of the petitioners herein during the pendency of the reference before the CGIT, which shall be subject to final adjudication.
4. The reference as made reads as follows:-

“ The Schedule
Whether the claim of Contractor's Workers Mazdoor Sangh vide letter dated 11.4.2016 to the management of Rifle Factory, Ishapore that Shri Bikash Ghosh and 6 others (list attached) working as contract labour in the establishment of Rifle Factory, Ishapore are performing the work which are same and similar in nature with that of workmen directly employed in the establishment of Rifle Factory, Ishapore is proper, legal and justified? If yes, to what relief including regularization of these

workers are entitled and what directions, if any, are necessary in the matter?”

5. The reference was made by the authority, under the Government of India and the said reference case no. 26 of 2022 is pending adjudication before the CGIT, Kolkata.
6. It is submitted by the learned counsel for the petitioners that there being no presiding officer posted at the CGIT, Kolkata, at present, the petitioner is unable to approach the Tribunal for relief.
7. It appears that a Misc. Case being no. 1 of 2023 has been filed by the petitioners before the Tribunal agitating the issue that during pendency of the reference case, they have not been permitted to join and both the reference case including the Misc. Case are pending adjudication.
8. Learned counsel for the petitioners has relied upon a decision of the Hon'ble Supreme Court in ***Bhavnagar Municipality vs. Alibhai Karimbhai & Ors., 1977 SCC (2) 350, decided on 08.02.1977***, wherein the Court held as follows :-

“(1) The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition must subsist and cannot be altered to their prejudice by putting an end to that temporary condition. This could be done only with the express permission of the Tribunal....”

9. Admittedly a reference has been made before the Tribunal and the same is pending. It prima facie appears that the petitioners herein were engaged through various contractors (respondent nos. 5 to 9) in the factory of the respondent nos. 2 to 4.
10. From the materials on record it prima facie appears that there has been an alteration of condition of service **during the pendency of a reference** before the CGIT, Kolkata and thus pending an industrial dispute, the petitioners herein have been prejudiced for such alteration of condition of service.
11. The Hon'ble Supreme Court in ***Bhavnagar Municipality (supra)*** has considered as to which kind of 'retrenchment' shall be amounts to alteration and condition of service.
12. The Court considered the fact that the subject matter of the Industrial Disputes Act was primarily connected with the conversion of temporary employment into permanent, thus, tampering with the *status ante* of these workers was clear alteration of condition of their service.
13. The Court in ***Bhavnagar Municipality (supra)*** further held as follows:-

".....Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration

of the conditions of service. **In this particular case, however, the subject matter: being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute.**

The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition of employment, however insecure, **must subsist** during the pendency of the dispute before the Tribunal and **cannot be altered** to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of section 33 which is principally directed to preserve the status quo under specified circumstances in the, interest of industrial peace during the adjudication. We are, therefore, clearly of

opinion that the appellant has contravened the provisions of section 33(1)(a) of the Act and the complaint under section 33A, at the instance of the respondents, is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted.....”

14. It appears that the workers herein have been working in the factory of the respondent nos. 2 to 4 through contractors for a considerable long period of time and were employed as temporary employees at the time of reference which is pending adjudication due to absence of a Presiding Officer.
15. Accordingly, the respondent nos. 2 to 4 are directed to reinstate the petitioners herein within seven days from the date of this order and permit them to continue to function in the position they were working prior to their not being permitted to join. The petitioners shall be permitted to work as temporary employees as directed till further direction by the tribunal (CGIT, Kolkata).
16. **WPA 8820 of 2025 is accordingly disposed of.**
17. The petitioners are granted liberty to communicate the server copy of this order to the concerned authority.
18. There will be no order as to costs.
19. All connected applications, if any, stand disposed of.
20. Interim order, if any, stands vacated.

21. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Shampa Dutt (Paul), J.)