

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WP 24851 (W) of 2016

Iman Ali Molla & Ors.

Versus

L.I.C.I. and Others

For the Petitioners : Mr. Arun Kumar Maiti (Mohanty), Adv.
Mr. R.R. Mohanty, Adv.
Mr. Jasojeet Mukherjee, Adv.
Ms. Snigdha Ghosh, Adv.
Mr. Shivam Saha, Adv.
Ms. Pusprita Chowdhury, Adv.

For the LICI : Mr. Mihir Kundu, Adv.

Heard on : 29.01.2025

Judgment on : 21.03.2025

Ajay Kumar Gupta, J:

1. Petitioner no. 1 worked as Pump Man – cum- Watch man in the L.I.C.I. staff quarter located at 6/1, Chetla Road, L.I.C.I. Staff Quarter, “R” Block, Kolkata – 700 053, petitioner no. 2 worked as Pump Man –cum- Watch Man at the pump room at Behala attached to the Staff Quarter, Kolkata 700 060 and petitioner no. 3 worked as cleaner –cum- sweeper at the L.I.C.I. Staff Quarter, 49, K.P. Roy Lane, Tollygunge, Deshpran Sashmal Road, Kolkata – 700 033 respectively. They were employed since 1982 and 1987 receiving a little monthly remuneration which was being paid by the L.I.C.I. Authority through the L.I.C.I. staff Licensees Association.

2. The management of the said L.I.C.I. (hereinafter referred to as ‘the Corporation’) refused to recognize the petitioners and others as their employees. The award dated 27th November, 2001 passed by Learned C.G.I.T., Calcutta in Reference No. 16/1992, which clearly stated that there was no employer-employee relationship between the petitioners and the Corporation. However, the petitioners continued to work without receiving the minimum wages from the corporation in violating the Minimum Wages Act and Abolition of the Labour Contractor Act, 1972.

3. Petitioners contended that by invoking the doctrine of waiver and estoppels, the aforementioned award became redundant and inoperative in the context of the present facts and circumstances of the case of the petitioners as they have been further engaged and continuously worked for the gain of the corporation.

4. In November, 2014, the L.I.C.I. authority surreptitiously served notice for termination of the service of the petitioners and stopped their remuneration. Despite termination, the petitioners continued to work at the corporation as per their request. This relationship established employer and employee bond supported by the various documents presented by Licensees Association. The petitioners claim entitlement of minimum wages for their services, even after their services were terminated. The non-payment of minimum wages violates the Minimum Wages Act and Article 23 of the Constitution of India.

5. The writ petitioners made a prayer for settlement of dispute to the Regional Labour Commissioner (Central) of the issue in question, even after the award was passed in November 27, 2001 in Reference No. 16/1992 by the Learned C.G.I.T., Calcutta. The petitioners were allowed to work continuously and were entitled to

minimum wages. The corporation continuously paid at a low rate of remuneration even after their termination in October, 2014. The petitioners claimed that they were working continuously without break as such they are entitled to back wages and minimum wages due to continuous nature of work. Thereby, the relation of employer and employee was established and the petitioners are entitled to have the benefit of the same.

6. As per the direction of Regional Labour Commissioner (Central), the Corporation had filed their written statement of defence and the petitioners herein also filed their reply denying and disputing the stand of the corporation.

7. After hearing both sides, the said Regional Labour Commissioner (Central) vide order dated 2nd June, 2016 was pleased to dispose of the claim of the petitioners by holding, *inter alia*, that the earlier award, specifically mentioned that there is no employer-employee relations between the petitioners and others and the corporation and, therefore, they were not entitled for relief. However, the Regional Labour Commissioner (Central) did not consider the written communication of the Secretary, LIC Staff Quarter Licensees Association which clarified that the corporation deployed the

petitioners and they worked even after termination as per request of the Corporation.

8. Even after failure of settlement, the petitioners made a representation before the Concerned Labour Commissioner (Central) requesting him to consider the order passed by him on 2nd June, 2016. But, in spite of receipt of the said representation of the petitioners, the Regional Labour Commissioner (Central), Kolkata did not take any steps. Consequently, the petitioners were compelled to make a representation being 'Annexure P-4' before the Chairman, L.I.C.I. Yoga Kashem Jeeban Bima Marg, Mumbai – 400 021 which remains pending till date.

9. Having no consideration of the representation of the petitioners, the petitioners are compelled to file this writ petition with a prayer to issue a writ of mandamus commanding the respondent and/or respondents concerned to quash and/or set aside the order impugned dated 2nd June, 2016 passed by the Regional Labour Commissioner (Central), Kolkata and reconsider the case of the petitioners in the light of their representation made by them on perusal of relevant documents to be produced by the petitioners in accordance with law. Hence, this Writ Petition.

10. In course of hearing, the learned counsel appearing on behalf of the petitioners submitted that the petitioners were engaged as Pump Man –cum- Watch Man and Cleaner –cum – Sweeper at the LIC Staff Quarter on different places for an extended period with their monthly remunerations are being paid by the LIC Authority through the LIC Staff Licensees Association.

11. It was further submitted that it is an admitted fact that earlier there was a dispute between the petitioner and others and the LIC. Which was resolved, centered on whether the LIC Employees Association, Calcutta could claim that the 22 workmen (as per list enclosed) were employees of LIC and, thus, entitled for direct employment benefits. After hearing, the Presiding Officer of the C.G.I.T., Calcutta passed an award on 27th November, 2001 and thereby held, *inter alia*, as follows:-

“15. In the circumstances, it becomes clear that there is no relationship of employer and employee between the LIC and the concerned workmen in this case. It has been stated by MW4 in his evidence that any appointment in the LIC is made on the basis of the Regulation and there is no evidence worthily led that these persons were employed in regular manner by following rules and procedures. In any public

undertaking the management is bound to strictly follow the rules and regulations and it does not appear to be probable that they agreed to engage these 22 persons for doing their job without observing any formality required. According to MW4, appointment in Class – IV is made against the sanctioned posts on the basis of advertisement made in the newspaper and by calling for the names from the Local Employment Exchange. There is no evidence to show that any formality of this kind was observed. Therefore, it appears to be improbable that these persons were ever engaged by the management of LIC and their job is not also connected with the business of LIC, which is admitted.

16. In this view of the matter, the question of granting any relief or holding that non-absorption of these 22 concerned persons is illegal or improper does not arise. There is no scope for granting any relief to the association or workman in this reference. Accordingly, the reference is decided.”

12. Even after passing the said award, the petitioners continued to render service in the said LIC Staff Quarters. Therefore, they are entitled to get minimum wages in pursuant to the provision of Minimum Wages Act. However, this claim was also denied by the LIC as observed by the Regional Labour Commissioner (Central), Kolkata

in its order dated 2nd June, 2016 and held that there is no scope to settle the grievances of above workers amicably. Accordingly, the grievances of the petitioners were disposed of as not settled.

13. Accordingly, the writ petitioners made a further representation for consideration of their case to the Chairman, LIC but the same is still pending for consideration. Sufficient documents were also attached with the writ petition i.e. Communications between the Secretary and Zonal Manager, Requisitions, Work Order and Supply of request for rendering services etc. in support of their contention that they have been engaged even after passing award in the year 2001. Therefore, the award dated 27th November, 2001 is not at all applicable in the case of the present petitioners for granting minimum wages for rendering services. Therefore, a direction may be passed by this Hon'ble High Court to the authority to pay back wages according to Minimum Wages Act to the petitioners when they have been engaged to render services to the LIC Staff Quarters.

14. On the contrary, the learned counsel appearing on behalf of the LIC vehemently opposed the prayer of the petitioners and submitted that in pursuance to the award passed by the CGIT, Kolkata, the petitioners having no locus standi to claim their demand

either as an employee of the LIC and/or for minimum wages. The Licensees of various Staffs in Kolkata formed an Association. The said association looked after the maintenance of the quarters although for such maintenance, a lump sum amount had been given time to time to the said association. Accordingly, the said association engaged some external workers from time to time as pump operators, sweepers and other maintenance labourers for upkeep of the said staff quarter complex and all the staff as engaged by the said association are neither engaged and/or appointed by the LIC nor payment of such workers and/or labourers were made directly by the LIC authority. They were engaged solely by the Staff Quarter Association for maintenance and upkeep of the quarters.

15. It was further submitted that while the matter stood thus in the year 2014 particularly on 06.10.2014, the LIC authority received a letter vide No. 14(31)/2014-B.1 dated 23.09.2014 from the Deputy Chief Labour Commissioner (Central) wherein a letter written by Shri Byomkesh Das, Sri Hiralal Mallik, Sri Prem Nath Rai, Renu Rai, Parbati Das and Iman Molla and submitted before the Deputy Chief Labour Commissioner (Central). The letter was forwarded to the LIC for its comments and in response of the said letter from the aforesaid

persons, the LICI vide its letter being Reference No. EZO/P & IR/PC 1018 dated 21.10.2014 placed its comments.

16. It was further submitted that thereafter on 19.01.2015, Byomkesh Das and five others submitted another letter which was duly forwarded by the Deputy Chief Labour Commissioner (Central) by its letter dated 13.05.2015 and ultimately on 28.01.2016 the Regional Labour Commissioner (Central) forwarded the said letter to the Regional Manager (P & IR) along with the letter dated 19.01.2015 received from said Byomkesh Das and five others for necessary compliance and, pursuant to that, the LICI Authority vide its letter No. EZO/P & IR/2015-163/P-1/VKB dated 15.02.2016 submitted its comments before the Regional Labour Commissioner (Central).

17. It was further submitted that, ultimately, the Regional Labour Commissioner (Central) by its letter being No. 14(31)/2014-B.1 dated 04.05.2016 requesting the LICI to appear which was received by the LICI on 11.05.2016 and in response to that on 12.05.2016 the LICI duly appeared before said hearing, the writ petitioners who are the applicants also appeared. Minutes were recorded on 12.05.2016 and date was fixed on 02.06.2016 at 11.00 AM. for further hearing and ultimately after hearing the respective parties on 02.06.2016, thereby the Regional Labour Commissioner

(Central) drew minutes of the meeting and found no scope to settle the grievance of the above workers amicably and accordingly the grievance was disposed of.

18. It was further submitted that the aforesaid persons through the association of the staff quarter already raised a dispute before the Labour Commissioner and such dispute was referred before the Central Industrial Tribunal being Reference No. 16/1992. After due contest, the Learned Tribunal disposed of the said matter holding, *inter alia*, that there is no relationship of employer and employee between the LICl and the workmen in that case and further those persons were never engaged by the management of LICl and their jobs are also not concerned of the business of the LICl which is admitted and accordingly there is no scope of granting any relief to the workmen. The reference was decided in favour of the LICl and as such the reference has failed and ultimately neither the said association nor the aforesaid workmen challenged such Award of the Learned Industrial Tribunal before any appropriate court and the same reaches its finality and accordingly question of raising selfsame point before the concerned authority is not maintainable and accordingly the instant writ application is not maintainable and liable to be dismissed with cost.

19. I heard the rival contention and submissions made by the learned counsel appearing on behalf of the parties and find earlier a dispute was resolved with finality by an award passed by the CGIT on 27th November, 2001. The award clarified that there was no employer and employee relationship between the LIC and the 22 workers including the petitioners herein. In any public undertaking, the management is bound to strictly follow the rules and regulations and it seems improbable that the LIC would have engaged the petitioners herein for doing their job without observing any formality required.

20. The view taken by the Regional Labour Commissioner (Central), Kolkata on 2nd June, 2016 is, *inter alia*, as follows:-

“RLC(C) Kolkata has observed that the AWARD in ref. No 16 of 1992 passed by the Ld. CGIT Kolkata had denied the regularisation/absorption to Shri Byomkesh Das & 5 others since employer-employee relation did not exist between the workers and LIC management. However, in course of discussion, the LIC authority was asked to deploy the above workers under contract labour system in order to ensure their appropriate minimum rates of wages. However, Shri Byomkesh Das & 5 others did not agree to work on contractual basis under deployment of any agency duly engaged by LIC on the plea that they have already rendered service for a considerable

period in LICI. As such, these workers have deserved appropriate protection along with minimum wages and other facilities from LICI authority only. Hence, there is no scope to settle the grievance of the above workers amicably. Accordingly, the instant grievance is disposed off at this stage.”

21. Considering the above facts and circumstances, there is no scope to issue a writ of mandamus commanding the authority concerned to pay back wages or minimum wages to the petitioners, when there is a dispute between the parties regarding engagement of the petitioners, terms, conditions, their remuneration and period of engagement etc. These are the disputed question of facts. The same is required to be adjudicated by way of the trial. It is well settled that a writ Court does not enter into disputed question of fact involved in the matter. The writ petitioners have alternative efficacious remedy under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the said Act’).

22. There is specific provision that if no such settlement is arrived at, the Regional Labour Commissioner (Central), Kolkata shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps

taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. In turn, the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

23. Therefore, the Respondent No. 4 is directed to follow the Sub-Section (4) of Section 12 of the said Act forthwith upon communication of this Judgment and send a full report to the appropriate Government (i.e., Central Government) and, in turn, the appropriate Government (i.e., Central Government) shall act accordingly under Sub-Section (5) of Section 12 of the said Act, since no such formalities were earlier followed by the authorities as revealed from the available record. Petitioners are directed to communicate the downloaded server copy of this Judgment to Respondent No. 4.

24. In the light of above observation, **WP 24851 (W) of 2016** is disposed of without any order as to costs.

25. Interim order, if any, stands vacated.

26. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

27. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.