

Association of Chemical Workers, Bombay

Vs

A. L. Alaspurkar and Others

Petition for Special Leave to Appeal (Civil) No. 5859 of 1992

(M. N. Venkatachaliah, P. B. Sawant, N. P. Singh JJ)

26.08.1992

JUDGMENT

1. This special leave petition arises out of and is directed against the order dated 6th April 1992 of the Division Bench of the High Court of Bombay in LPA No. 43 of 1992 arising out of W. P. No. 1221 of 1992.
2. The petitioner "Association of Chemical Workers, Bombay" claims to represent and has brought this action on behalf of 472 workmen who were the erstwhile workmen appointed by various labour contractors engaged by the management - respondent No. 2 herein. In view of certain disturbed industrial relations, respondent 2 on 20th Nov. 1979 terminated the very contract with the labour contractors as a sequel to which the labour contractors, in turn, terminated the services of all these workmen on various dates soon thereafter. It is alleged that, thereafter, the same labour contractors had been reengaged by the respondent No. 2 and those contractors continued the same work with a new set of workmen.
3. In the year 1985, the labour-contract system then prevailing in various departments of respondent No. 2 came to be abolished by Government. The notification in this behalf was challenged by respondent No. 2 but it came to be upheld by the High Court except for some areas of operation which were saved for contract-labour. The matter ultimately came to rest with order of the High Court being left undisturbed by this Court.
4. The workmen-petitioners have been agitating the question of the legality and fairness of termination of their services done in the year 1979 contending, inter alia, that the erection of the intermediary of labour contractors was merely a device and facade; that they were all really employees of respondent No. 2 and that the termination was an unfair labour practice and void. After a chequered course of litigation, the matter ultimately came before the Industrial Court of Maharashtra, Thane, in "Complaint (ULP) No. 264 of 1989" under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Apart from the aforesaid contentions the workmen contended before the Industrial Court that, at all events, after the abolition of the contract-labour in the year 1985, they automatically became the workmen of respondent No. 2 and were entitled to reliefs of reinstatement, back wages etc.
5. The Industrial Court by its order dated 17th February 1992 dismissed this action for various reasons. The Industrial Court noticed, inter alia, that between 1979, when the petitioner-workmen's services were terminated by the then labour-contractors, and 1985, when the contract labour was

abolished in certain areas of operation of respondent No. 2, the labour contractors had employed their own separate set of workmen and that, therefore, even, if, as a result of the abolition of contract labour, workmen became the employees of the principal, those workmen were other than the petitioners. The High Court in W. P. No. 1221 of 1992 brought by the petitioner-workmen upheld the order of the Industrial Court. The High Court observed

"In view of the several previous orders of the High Court as well as the Apex Court and especially referred in para 34 of the impugned order and in view of the decision of the Apex Court in the matter of Dena Nath's case reported in (1991) 4 JT (SC) 413: (AIR 1992 SC 457), no fault can be found with the impugned order. Rejected."

The Division Bench in Letters Patent Appeal No. 43 of 1992 dismissed the workmen's appeal observing:

"We agree with the reasoning and conclusion of the learned single Judge and summarily dismiss the Appeal."

6. We have heard Mr. Salve, learned senior counsel for the workmen and Mr. Andhyarujina, learned senior counsel for the second respondent company. We are persuaded to the view that the order of the High Court sought to be appealed against does not call for interference. It is, therefore, unnecessary to go into the contentions strenuously urged by Mr. Salve that upon termination of the contract labour, the workmen of the contractor would automatically become the workmen of the principal and that, having regard to this purpose of the enactment, we should re-examine the correctness of the pronouncement in Dena Nath's case, (AIR 1992 SC 457) (supra) which to the extent it goes to support the contention of Mr. Andhyarujina that the abolition of the contract system for very weighty reasons does not, and is not, intended to have such an effect.

7. Shri Andhyarujina contended that in the present case in view of the supervening events that occurred after the termination of workmen's services in 1979, the workmen do not stand to benefit by the proposition of Mr. Salve as in the interregnum the contractors had employed other workmen.

8. We find that there is no error in the order of the Industrial Court-as affirmed by the High Court and the matter does not call for any interference.

9. However, we are of the opinion that the grievances of these workmen should be redressed in some reasonable and appropriate manner. They have been agitating for these 13 years. It appears appropriate that while their somewhat exaggerated claims for reinstatement and back wages require to be, and are hereby, rejected, they should be afforded an opportunity of being considered for fresh recruitment with respondent No. 2 as and when the vacancies, existing or future, are filled up in the respective operational areas of contract labour which have been abolished (except in the canteen area where already some old workmen have been re-absorbed).

10. We, accordingly, direct that for the vacancies that exist or might arise in future and as and when these vacancies are sought to be filled up in the following departments, namely, (i) general, cleaning, removal of garbage, grass cutting and road cleaning; (ii) cleaning of equipments, pipeline work, erection of equipments; and (iii) equipment cleaning during shut down period (as clarified by the High Court in its order), preference shall be given to the workmen whose services were terminated in the year 1979 by the respective labour contractors. The list of such workmen, classified according to the area of operation, is furnished as an Annexure to the letter dated 19-9-

1988 addressed to the Managing Director of respondent No. 2 by the petitioners. However, this list shall not be taken as conclusive for purposes of entitlement to such preference on the claim that they were in the contractors service in the year 1979, but identity and bona fides of the workmen shall be examined by the Deputy Commissioner, Labour, Thane, on the basis of the material to be produced by the petitioners and after affording an opportunity to respondent 2. A department-wise list of eligible workmen for such preferential recruitment shall be prepared within a period of four months from today.

11. The preference shall be confined to the vacancies and recruitments in the areas of operation in which contract system was abolished as particularised earlier (except the canteen department). The preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without break, under the contractor prior to their respective termination in 1979. The preference shall also be subject to the workmen possessing the requisite qualification, if any, required for the job, in the particular areas of operation.

12. With these directions the Special Leave Petition is disposed of.

Order accordingly.

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