SUPREME COURT OF INDIA

(1) Workmen of Bhurkunda Colliery of Messrs Central Coalfields Limited; (2)

Employers In Relation To Management of Bhurkunda Colliery of Messrs Central, oalfields Limited

Vs

(1) Management of Bhurkunda Colliery of Messrs Central Coalfields Limited; (2) Bazar

Appeal (Civil) 1600 of 2005; Civil Appeal No. 1601 of 2005

(Arun Kumar and Dalveer Bhandari, JJ)

27.01.2006

JUDGMENT

DALVEER BHANDARI, J.

The main concept of regularization of Indian Industrial jurisprudence is the subject-matter of adjudication in these Civil Appeals. We propose to dispose of both these appeals by this judgment.

Brief facts which are necessary to dispose of these appeals are recapitulated as under:

In these appeals, the award given by the Central Government Industrial Tribunal has been upheld by the learned Single Judge and appeals against the judgment of the learned Single Judge have been dismissed by the Division Bench of the Jharkhand High Court.

125 workmen were in the employment of Bhurkunda Colliery in various capacities since before its

take-over by the Central Coalfields Ltd. (for short 'CCL'). After the take-over by the 'CCL', the concerned workmen were employed as Mazdoors in certain engineering projects and were known as Civil Engineering Workers. The concerned workmen claimed that such type of Civil Engineering Workers should be put on regular basis as casual labour and in course of time they should be regularized.

The management of 'CCL' also issued a direction that such workmen who have completed 240 days of attendance should be regularized. In fact, a large number of workers employed in Gidi-A Colliery of 'CCL' were regularized on the basis of certain directions of the Headquarter of 'CCL'. Even in case of Bhurkunda Colliery, 39 workers of the said type were also regularized.

The Labour union took up the matter of the concerned 125 Civil Engineering Workers on the ground that the services of these workers should be regularized. The union raised a demand that instead of regularizing the services of the workers, the management retrenched the concerned workmen. This gave rise to an industrial dispute. On persuasion of the union, with initial resistance, ultimately, the Home Ministry of Government referred the dispute to the Tribunal for adjudication. "Whether the demand raised by Koyla Mazdoor Sabha in regard to alleged discrimination in employment/regularization of 125 casual workers of Repair and Maintenance Section (Civil) of Bhurkunda Colliery of Central Coalfields Limited is justified? If so, what relief is these workmen entitled?"

The Presiding Officer of the Central Government Industrial Tribunal (No.2), Dhanbad in the Award dated 15th May, 1988 held that the dispute raised by the Labour union on behalf of the concerned workmen was not stale as the matter was being pursued by the union due to the stoppage of work by the concerned workmen. It was admitted by the union that 21 workmen left the services and consequently the number was reduced from 125 to 104. The Tribunal held that the casual workmen of Bhurkunda Colliery also deserve the same benefit which was given to the workmen of Giddi-A Colliery and as such their services also deserve to be regularized.

According to the Tribunal, on scrutiny, out of 104 casual workmen, only 74 of them in Repairs and Maintenance (Civil) Section of Bhurkunda Colliery of M/s 'CCL' could justify their claim. As such, the management was directed to enlist those 74 workers as casual workmen and be provided with different jobs in Category-I and they may be regularized after they have fulfilled the condition of attendance in a year. The Award of the Tribunal was challenged. The management filed C.W.J.C. No.1175 of 1989 and labour union filed C.W.J.C. No.1083 of 1991 and Koyla Mazdoor Sabha on behalf of 51 persons, who were not granted any relief in the award, also filed C.W.J.C. No.680 of 1999 and all the three writ petitions were heard together by the learned Single Judge. The learned Single Judge, who heard these three writ petitions, did not interfere with the Award of the Tribunal. The Division Bench of the Jharkhand High Court upheld the judgment of the Learned Single Judge and consequently as directed by the Tribunal, cases of 74 workmen were required to be considered for regularization of their services after they have fulfilled the condition of attendance in a year.

We have heard the learned counsel appearing for the workmen and the management at length. We see no reason to interfere with the findings of fact arrived at by the Tribunal and affirmed by the learned Single Judge and the Division Bench of the High Court. The process of regularization which has already been initiated must be completed as expeditiously as possible or in any event, within two months from today.

In pursuance to the order of the High Court, the management has deposited some amount towards the wages with the High Court and the Registrar of the Jharkhand High Court has been disbursing Rs.500/- per month to some of the workmen. Learned counsel appearing for the management has also filed a list of workmen who were being paid wages @ Rs.500/- per month as per the order of the High Court out of the amount deposited in the High Court by the management. The Registrar of the High Court shall continue to pay Rs.500/- to these workmen till their respective claims are verified. We direct the Registrar of the High Court that their claims be verified as expeditiously as possible and in any event within a period of two months. In the facts and circumstances of these cases, we direct that the amount already paid to the workmen shall not be recovered and the Registrar of the High Court is directed to ensure that the remaining balance amount after verification of the claims be refunded to the management.

To avoid any further litigation, we direct the management to submit a report to this Court regarding regularization of the workmen within three months.

In the facts and circumstances it becomes imperative to issue direction regarding regularization. The main object of enacting Industrial and Labour laws is to ensure peace and harmony between the employers and the employees in the larger interest of the society.

The industrial growth leading to economic prosperity largely depends on happy and healthy relationship between employers and employees.

As early as in 1967, this Court in the case of Hindustan Antibiotics Ltd. v. Workmen 1967 AIR(SC) 948 observed that the social and economic enlistment of the labour is absolutely imperative for securing industrial peace.

Security of tenure is essential for an employee so that he can give his best to the job. This object can be attained by regularization of the employees within a reasonable period.

In the case of Calcutta Port Shramik Union v. Calcutta R.T. Association, this Court observed that the object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace.

This Court in S.M. Nilajkar and Others v. Telecom Distt. Manager, Karnataka was of the opinion that the labour laws being beneficial pieces of legislation are to be interpreted in favour of beneficiaries. According to the Court, in case of doubt or where it is possible to take two views of a provision, the benefit must go to the labour.

This Court in State of Haryana v. Piara Singh held that so far as the work-charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person.

In the matter of regularization, the main concern of the Court is to see that the rule of law is respected and to ensure that the executive acts fairly and give a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution of India. The State being a model employer should not exploit the employees nor take advantage of helplessness and misery of either the unemployed person or the person concerned, as the case may be.

Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is regular need for his services on a regular post and accordingly considers regularization.

It is also our bounded duty to give expression to the legislative intention for creating a healthy environment leading to proper understanding and cooperation and in true sense a partnership between the employers and the employees in cases of industrial disputes.

The report of the National Commission of Labour published by Ministry of Labour, Employment and Rehabilitation in 1969 has dealt with the aspect of industrial peace and harmony. It will be appropriate to recapitulate some aspects of that report:

According to the philosophy of the First Five Year Plan, peace in industry has a great significance as a force for world peace if we consider the wider implications of the question. The answer to class-antagonisms and world conflicts will arrive soon if we succeed in discovering a sound basis for human relations in industry. Economic progress is also bound up with industrial peace. Industrial relations are, therefore, not a matter between employers and employees alone, but a vital concern of the community which may be expressed in measures for the protection of its larger interests.

A quest for industrial harmony is indispensable when a country plans to make economic progress. It may sound platitudinous but it is nevertheless true that no nation can hope to survive in the modern technological age, much less become strong, great and prosperous, unless it is wedded to industrial development and technological advance. Economic progress is bound up with industrial harmony for the simple reason that industrial harmony inevitably leads to more cooperation between employers and employees, which results in more productivity and thereby contributes to all-round prosperity of the country. Healthy industrial relations, on which industrial harmony is founded, cannot therefore be regarded as a matter in which only the employers and employees are concerned; it is of vital significance to the community as a whole. That is how the concept of industrial harmony involves the cooperation not only of the employers and the employees, but also of the community at large. This cooperation stipulates that employees and employers recognise that though they are fully justified in safeguarding their respective rights and interests, they must also bear in mind the interests of the community. In other words, both employers and employees should recognise that as citizens they ought not to forget the interests of the community. If this be the true scope of the concept of industrial harmony, it follows that industrial harmony should and ought to emphasize the importance of raising productivity, because the resulting accelerated rate of growth will lead to the good of the community as a whole. That, we consider, is the true significance of the doctrine of industrial harmony in its three- dimensional aspect.

It is plain that in order to create a proper climate for industrial harmony and to cultivate proper attitudes in the minds of the employees and the employers alike, it is essential that employees must be well organized and trade unionism must become strong. Employers must be progressive and must recognize whole-heartedly the validity of the doctrine that they and their employers are partners in the adventure of the growth of the industrial life of the country. The history of the trade union movement in the world shows that healthy and proper attitudes are not easily born and the trade union movement does not become strong without resistance from the employers, and such resistance leads to a long and bitter strife. Quest for industrial harmony has thus been sometimes stalled or delayed or frustrated by struggles between the employers and the employees.

The growth of industrial jurisprudence in India, subsequent to 1950, bears close resemblance to the growth of Constitutional Law in relation to the fundamental rights guaranteed to the citizens.

The industrial jurisprudence, likewise, seeks to evolve a rational synthesis between the conflicting scheme of the employers and employees. In finding out solutions to industrial disputes great care is always taken, as it ought to be, to see that the settlement of industrial disputes does not go against the interests of the community as a whole. In the decision of major industrial disputes, three facts are thus involved. The interests of the employees which have received constitutional guarantees under the Directive Principles, the interests of the employers which have received a guarantee under Article 19 and other Articles of Part III, and the interests of the community at large which are so important in a Welfare State. It is on these lines that industrial jurisprudence has developed during the last few decades in our country.

When we modulate our thinking process and attitude according to the underlying philosophy of Industrial and Labour jurisprudence and apply the laws meant for industrial peace and harmony, then the conclusion becomes irresistible that the employees who have been working since 1973-74

required to be regularized as expeditiously as possible.

Both employers and employees have their respective obligations. They must have the appreciation of each other's responsibilities, duties and obligations. The Trade Union and Labour Union should not understand and appreciate the fact that Labour is not a commodity nor is it a mere supply of Labour force at the management's disposal. Essentially, Labour is the real basis that underlines the production of goods and services. Through the work should the human personality and its sense of responsibility be able to unfold, management should appreciate this and always attribute its success to the trained and effective labour force. It must be understood by all concerns that both the employees and employers are vital for any industry and unless there is proper coordination, a smooth functioning of any industry would be difficult.

On the basis of the aforementioned observations, these appeals are disposed of. In the facts and circumstances of these cases, we direct the parties to bear their respective costs.