SUPREME COURT OF INDIA

Panki Thermal Station

Vs.

Vidyut Mazdoor Sangthan

C.A.Nos.885-886 of 2009

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

11.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. This is second journey of the appellants to this Court. A Writ Petition No.47303 of 1999 was filed by the employers who are the present appellants questioning correctness of the order dated 6.8.1999 passed by the Labour Commissioner (in short the `Commissioner') under Rule 25(2)(v)(a) of the *U.P. Contract Labour (Regulation and Abolition) Rules, 1975* (in short the `Rules'). The workmen had challenged the award dated 30.7.1999 and Writ Petition No.47303 of 1999 was disposed of by the High Court by order dated 11th July, 2003. The present appellants challenged the judgment of the High Court in Civil Appeal No.1734 of 2004. By judgment dated 15.9.2005, this Court set aside the order holding that the High Court ought to have taken both the writ petitions together as the issue was the same. The High Court by the impugned judgment held that the award of the Industrial Tribunal (3), U.P., Kanpur (in short the `Tribunal') dated 30.7.1999 did not require any interference and the writ petition filed by the appellants deserves to be dismissed. The Tribunal had answered the reference in the following terms:

> "On the basis of the pleadings of the parties and evidence on record my conclusion to the reference is that the action of the employer No.1 in not regularizing the services of 118 employees mentioned in the reference is justified and valid and that the workmen concerned are not entitled for any relief."

3. The High Court noted that there were two orders one passed by the Commissioner dated 6th August, 1999 which was the subject matter of challenge in writ petition No.47303 of 1999 and the other was passed by the Tribunal. The Commissioner by order dated 6.8.1999 held that on the basis of the pleadings and materials on record, it is apparent that the workmen were working in the establishment for several years and refusal to pay similar pay as being paid to regular employees had no legal justification. The Commissioner, therefore,

directed that the 118 workmen in question should be paid similar wages as was being paid to unskilled regular workmen alongwith D.A. and other allowances on the principle of equal pay for equal work.

4. So far as the award of the Tribunal is concerned, the High Court noted that in view of the decisions of this Court in *Secretery, H.S.E.B. v. Suresh and Ors.*[1] *and BHEL Workers Association, Hardwar and Ors. v. Union of India and Ors.*[2] though the workmen had registered under the provisions of *U.P. Contract Labour (Regulation and Abolition) Act, 1970* (in short the `Act') they were definitely working directly under the employer and that each one of them has worked for more than 240 days in a previous calendar year and, therefore, the Commissioner's order does not suffer from any infirmity.

5. According to learned counsel for the appellants Rule 25 (2)(v)(a) of the Rules require the Commissioner to analyse the pleadings, evidence and documents placed on record and to arrive at a conclusion as to whether the workmen are performing the same duties as have been performed by the regular employees. In the order passed by the Commissioner no discussion about the manner of work performed by the workmen and regular employees was given. There was also no consideration in respect of workman Rajesh Kumar Pandey and 12 other workmen who were working in the Field Hostel No.1. Since the Commissioner had passed an order without considering the pleadings and documents and wrongly shifted the burden of proof to the appellants, whereas it has to be proved by the employees that they were doing the similar work like regular employees, the order of the Commissioner is unsustainable. Further, the direction to ensure payment of salary, D.A. etc. ought not to have been given.

6. The Commissioner failed to consider the difference between the labour contract and the job contract. The labour contract is entered for supply of labour and the labour so supplied work under the directions of the employer whereas in the present case the work was given like coal handling and cleaning to the contractor for a lump sum amount for a certain period. Neither the number of employees was fixed nor they were under the control of the appellants. Therefore, Rule 25 has no application.

7. The High Court mixed up issues and without considering the order of the Commissioner on merits dismissed the appeal.

8. In response, learned counsel for the respondents submitted that the proviso to Rule 25 (2)(v)(a) casts a duty on the Commissioner to examine the pleadings and documents on record and find a decision regarding the nature of work. In the present case, the details of work done by two categories of workers were placed on record, whereas the principal employer or the contractors did not produce any material at all excepting mere denial of the similarity of work. It is submitted that under Section 21(4) of the Act though primary responsibility of the payment of wages is on the contractor, in case the contractor fails to make payment of wages then the principal employer shall be liable to make payment of wages in full or of unpaid balance to the contract labour.

9. The award of the Tribunal denied the relief of regularization overlooking the fact that there was tripartite agreement.

10. The pivotal provision for resolving the dispute is Rule 25 (2)(v)(a). The same reads as under:

> "In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.
>
> Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Labour Commissioner, U.P. whose decision shall be final."

11. A bare reading of the provision makes the position clear that in cases where the workmen employed by the contractor perform the same or similar kind of work as employed directly by the principal employer of the establishment the wages rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as are applicable to principal employer. In case of disagreement with regard to the type of work the same shall be decided by the Commissioner.

12. It is to be noted that there was no prayer made by the claimants for equal pay. No material was placed regarding actual nature of work. Yet the Labour Commissioner recorded as follows:

> "....What is the main difference in the work done by these contract labour and the regular employees has not been clarified. Clearly the work of cleanliness done by the employees is similar and the same position is in respect of unskilled employees and the contract labour."

13. The High Court's judgment is a bundle of confusions. In the Commissioner's order there is no discussion as to how the Commissioner arrived at the conclusion about similarity of work. The Commissioner ought to have considered on the basis of pleadings and materials placed by the parties. The Commissioner was required to arrive at a conclusion that the workmen had been performing the same duties as are being performed by regular employees. The Commissioner's order does not reflect that these aspects were considered. As noted above, the conclusions of the High Court are bundle of confusion. The comparison of the following conclusions clearly shows as to how the High Court's judgment lacks clarity: "Nothing has been brought to the notice of this Court on behalf of the petitioner that these findings arrived at by the Tribunal to the effect that concerned workmen were employed through contractors registered under the provisions of 1975 Act referred to above suffers

from any error much less an error apparent on the face of record which may warrant interference under Article 226 of the Constitution of India.

xxx xxx xxx

> "...So far as the claim application is concerned there is categorically recorded finding that the labour employed through contractor are always employed for a fixed period and are continuously working for more than 240 days in the previous calendar year. In this view of the matter, even though they are registered under the provision of U.P. Contract Labour (Regulation and Abolition) Act, 1970 they are definitely working directly under the employer and it is proved beyond doubt on the evidence on record that everyone of them has worked more than 240 days in previous calendar year."

14. As neither the Labour Court not the High Court addressed to the basic issues, the impugned judgment of the Labour Court as affirmed by the High Court cannot be maintained and are set aside. The matter is remitted to theCommissioner to decide the matter afresh.

15. The appeals are allowed to the aforesaid extent.

[1]*(1999 (3) SCC 601)*
[2]*(1985 FLR (50) 205)*