

SUPREME COURT OF INDIA

U.P.Rajya Vidyut Utpadan Board

Vs.

U.P.Vidyut Mazdoor Sangh

C.A.No.1989 of 2002

(D.K. Jain and R. M. Lodha JJ.)

04.11.2009

JUDGEMENT

R.M. Lodha, J.

1. This appeal by special leave is directed against the judgment dated August 3, 1999 passed by the High Court of Judicature at Allahabad whereby special appeal preferred by the present appellants against the judgment and order dated May 14, 1999 passed by the Single Judge has been dismissed. The Single Judge dismissed the writ petition preferred by the present appellants challenging the order dated October 24, 1998 passed by the Labour Commissioner, U.P.

2. Uttar Pradesh Vidyut Mazdoor Sangh (first respondent--hereinafter referred to as 'Union',) made an application under Rule 25(2)(v)(a) of the *Uttar Pradesh Contract Labour (Regulation and Abolition) Rules, 1975*, ('Rules, 1975', for short) before the Labour Commissioner, Kanpur praying therein that order be passed for payment of the same wages and other facilities in favour of contract labour working in second filtration plant of Anpara Thermal Power Project as are being paid by the employer to its employees in the main filtration plant. The Union set up the case that there are two filtration plants in Anpara Thermal Power Project; out of these plants in one plant (for the sake of convenience, hereinafter referred to as 'main plant') regular employees are employed by the Electricity Board while in the other filtration plant, contract labour is being employed through contractors. In both filtration plants, the nature of work done by all these employees is same but the workers are paid their wages at different rates. Twenty- six workers, who have been directly appointed by the Electricity Board, are being paid regular pay scale with permissible allowances etc. while twenty-eight contract workers engaged through two contractors are paid at the rate of Rs. 61/- per day for unskilled work and Rs. 71.50 per day for semi-skilled work. The Union asserted that work in both the filtration plants is of the same nature and regular.

3. The present appellants resisted the application made by the Union on diverse grounds. That there are two water filtration plants in Anpara Thermal Power Project was admitted.

However, it was submitted that main filtration plant is permanent having the capacity of treating three million gallons water per day while the second one is temporary having the capacity of treating three lac gallons per day. It was further submitted that from permanent filtration plant, supply is given to the entire colony and ITI passed/trained operators are being appointed by the department to run it; these appointments are made by the selection committee through selection procedure on the basis of eligibility and advertisement by the Board. The permanent plant runs 24 hours; it has six pumps and each has the capacity of 170 H.P. The chemicals are mixed at this plant mechanically and for its operation eligible and responsible employees are required. In the other filtration plant which is of temporary nature, employees are engaged through contractor for its operation. The temporary filtration plant is operated by skilled and semi-skilled employees who are engaged by contractors. These workers are paid wages at the rate declared by the labour department. The appellants set up a specific case before the Labour Commissioner that the work of the employees in the two filtration plants cannot be compared and, therefore, the employees working in the temporary filtration plant are not entitled to the same wages and facilities as are being paid to the regular employees working in the main filtration plant.

4. The Labour Commissioner, however, was not persuaded by the reply submitted by the Electricity Board and vide his order dated October 24, 1998 held that the contract labour in temporary filtration plant should be paid the wages at the rate admissible to the workers in the main plant.

5. The present appellants challenged the order of the Labour Commissioner by filing writ petition before the High Court of Judicature at Allahabad. The Single Judge dismissed the writ petition on May 14, 1999 holding that the findings recorded by the Labour Commissioner required no interference.

6. The special appeal preferred by the present appellants before Division Bench was held not maintainable.

“Even on merits, the Division Bench held that the view of the Single Judge did not commend itself for interference in view of the order passed by the Labour Commissioner holding that the employees employed through the contractor were performing same or similar kind of work as the workmen directly employed by the appellants.”

7. We heard Ms. Shobha Dikshit, learned Senior Counsel for the appellants and Mr. J.C. Batra, learned Senior Counsel for the Union.

8. Rule 25(2)(v)(a) of the Rules, 1975 provides that 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 by the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment.

It further provides that in case of any dispute with regard to the type of work, the Labour Commissioner, Uttar Pradesh shall decide the same and his decision shall be final.

9. It would be, thus, seen that Rule 25(2)(v)(a) incorporates the principal of 'equal pay for equal work'. By statutory provision, it is mandated that the employees engaged by the employer through contractor who perform the same or similar kind of work must be paid the same wages and facilities as being paid to the employees employed directly by the principal employer of the establishment. In case of any controversy as to whether 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 Labour Commissioner has been empowered to resolve such dispute.

10. Nature of work, duties and responsibilities attached thereto are relevant in comparing and evaluating as to whether the workmen employed through contractor perform the same or similar kind of work as the workmen directly employed by the principal employer. Degree of skill and various dimensions of a given job have to be gone into to reach a conclusion that nature of duties of the staff in two categories are on par or otherwise. Often the difference may be of a degree. It is well settled that nature of work cannot be judged by mere volume of work; there may be qualitative difference as regards reliability and responsibility.

11. In the instant case, except recording that the contract labour engaged through contractors is doing the similar work, the Labour Commissioner in its order has not adverted to the evidence and material placed before it. The only consideration by the Labour Commissioner in its order dated October 24, 1998 is as follows:

"I have fully considered all the facts and perused the records and documents produced by the parties. On the basis of the facts submitted, there is no reason before me on the basis of which the contract labour engaged through contractors who is working the similar work, should be given wages at a lesser rate than the permanent employees. Only minimum qualification could be the basis for the worker of both the plants to some extent. Therefore, considering all the facts my opinion is that 28 contract labour in temporary plant through contractor M/s. Eastern Engineering Corporation and M/s. Kheroni Constructions Company should be paid the wages at the rate admissible to the workers/labours in permanent plant. This is my decision in respect of application....."

12. As a matter of fact, the present appellants specifically set out the details of works in two water filtration plants thus:

"There are two water filtration plants in Anpara Project. One is permanent having the capacity of treating 3 million Gallon water per day (3 M.G.D) or 30 lacs gallon per day and the second is temporary having capacity of treating 3 Million Gallons per day i.e. 3 lacs gallons per day. From permanent treatment plant, water supply is given to the entire permanent colony. This plant is very important and permanent. Therefore, I.T.I. passed/trained operators are being appointed by the department to run it. The

appointments are being made by the Selection Committee through selection procedure on the basis of eligibility and advertisement by the Board. Therefore, the operators and employees appointed on this plant are permanent employees of the department and they are fully responsible for the work done by them. The equipments installed at this plant are of permanent nature and it is being run 24 hours (day and night). There are 6 pumps at this plant and each has the capacity of 170 H.P. and consumes 9302.40 watts electricity. The chemicals are mixed at this plant mechanically and for its operation eligible and responsible employees are required. The salary of these employees comes in the payscale of permanent employees who have been appointed. There are 26 employees have been appointed and working in this plant.

The other filtration plant is of temporary nature and is being operated till the next phase of the project is completed and after the completion of next phase it will be closed. From this plant water is supplied to the temporary colony and project area. It is being operated through contractor. The Department makes the payment to the contractor on the basis of itemwise as per the work executed and not labour wise. The contractor used to make payment to his employees on the basis of minimum wages declared by the Government from time to time and not less than that amount.

The contractor get this plant operated by his 3 unskilled and 3 semi-skilled employees.

The basic pay of the regularly operated appointed by the Board are water filtration plant is as follows :

Operators--Basic Pay Rs. 1200 D.A.2572 Local compensatory Allowances 180.

Interim Relief 340. Total 4292 per month.

Labourers : Basic Pay Rs. 900 D.A. 1931 Local compensatory Allowance Rs. 120 Interim Relief Rs. 300 Total Rs. 3251 per month 8 The contractors used to pay to his semi-skilled employees Rs. 1857.87 per month and to unskilled employees Rs. 1580.23 per month which are declared by Labour Department to the employees in temporary filtration plant. Its photocopy is enclosed.

The above facts show that it will not be justiciable to compare the work and facilities of the employees working in permanent filtration plant with the employees working in Temporary Filtration Plant."

13. Despite such a specific case set up by the present appellants before the Labour Commissioner to show that the contract labour in filtration plant engaged through the contractors do not perform the same or similar kind of work as is done by the employees employed directly by the employer in main plant, the Labour Commissioner did not advert to these aspects at all. The Labour Commissioner ought to have adverted to the nature of duties of the staff in the two categories, degree of skill and dimensions of the job for reaching the

conclusion that the work done by the contract labour in the second filtration plant is same or similar to the kind of work done by the employees employed by the principal employer directly in the main plant. There is no discussion at all by the Labour Commissioner as to how he arrived at the conclusion about similarity of work. The evidence let in by the parties and the material placed by them seem to have not at all been considered by the Labour Commissioner.

14. The order of Single Judge is no better. He has simply not considered any thing. Insofar as Division Bench is concerned, although, the judgment runs in nine foolscap typed pages but out of that, eight pages relate to maintainability of appeal. In one paragraph, on merits, the Division Bench said thus:

".....,we are of the considered view that the judgment of the learned Single Judge does not commend itself for interference on merits. The learned Single Judge has committed no illegality in maintaining the order passed by the Labour Commissioner holding that the workmen on whose behalf application under the proviso to rule 25(2)(v)(a) of the U.P. Rules was filed, though employed by the Contractor, were performing the same or similar kind of work as the workmen directly employed by the appellant and therefore, the wage rates and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the appellants on the same or similar kind of works."

15. We are afraid, the consideration of the question as to whether the workmen employed by the contractors in the second filtration plant perform the same or similar kind of work as the employees directly employed by the principal employer in the main plant by the Labour Commissioner as well as High Court is highly unsatisfactory. In a situation such as this, we are constrained to set aside the impugned judgment of the High Court as well as the order dated October 24, 1998 passed by the Labour Commissioner, Uttar Pradesh. The application made by the Union under Rule 25(2)(v)(a) of the Rules, 1975 is restored to the file of Labour Commissioner, Kanpur, Uttar Pradesh for fresh consideration in accordance with law.

16. Appeal is allowed to the aforesaid extent with no order as to costs.