Punjab-Haryana High Court

Secretary, Haryana State ... vs State Of Haryana And Ors. on 24 January, 1995

Equivalent citations: (1996) ILLJ 411 P H, (1995) 110 PLR 96

JUDGMENT R.P. Sethi, J.

1. **Can the principle of lifting the veil be applied in the matters governed by the Industrial Disputes Act, 1947 (for short the 'Act') to determine the relationship of workman and employer is a question of law** involved in these petitions, the determination of which would merit the result of the petition. If the aforesaid principle is not applicable in the industrial disputes, such petitioners are sure to succeed but if it is held otherwise, the consequences may be different.

2. Under Section 2(g) of the Act, an employer has been defined to mean, "in relation to an industry carried on by or under the authority of any Department of the Central Government or the State Government, the authority prescribed in that behalf or where no authority is prescribed, the head of the Department and in relation to an industry carried on by or on behalf of that authority". The definition is not exhaustive and has been provided only in relation to the industries specified under the Act. The term is to be given its ordinary meaning keeping in view the facts and circumstances of the case and the purpose for which the Act was enacted. Under Section 2(S), the workman has been defined to mean any person employed in any industry to do any manual, unskilled, skilled or Clerical work for hire or reward whether the terms of employment be express or implied. The determination of a person to be a workman is dependent upon the nature of work done by him. Neither the designation nor the nomenclature is important because the main criteria is the nature of the work being carried on by the person concerned. He should have been employed to do skilled or unskilled, manual, supervisory work, technical or clerical work. If the employee is not required to do any of the aforesaid works, he cannot be held to be a workman within the meaning of the definition of the workman under the Act. Retrenched workmen are therefore deemed to be workmen for the purposes of any industrial dispute and similar is the position with respect to a dismissed employee.

3. When the workman or labourer produces goods or services for the business of another, that other would be held to be an employer vis-a-vis the workman. In **Hussainbhai v. Alath Factory Tozhilali Union**, **(1978-II-LLJ-397) the Supreme** Court considered the matter regarding the existence of relationship of an employee and employer and held:-

"**Who is an employee, in Labour Law**? That is the short, die-hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give shift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-Unions's workmen and so **no direct employer-employee inoculum juris** existed between the petitioner and the workmen.

This argument is impeccable in laissez faire economies **'red in tooth and claw'** and under the Contract Act rooted in English Common Law, But the Human gap of a century yawns between this strict doctrine and industrial Jurisprudence. The source and strength of the industrial branch

of Third World Jurisprudence is social justice proclaimed in the preamble of the Constitution. This court in Ganesh Bedi's case 1974-I-LLJ-367 was based on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in condition of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine- spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succor for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.

The True test may with brevity, be indicated once again. **Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer.** He has economic control over the workers subsistence, skill and continued employment, If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractual is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when the labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."

4. The principle of lifting the veil in industrial jurisprudence was applied and that principle thereafter has consistently been followed by all the Courts in the country. The Labour Court in the instant case also relied upon **the dictum of the Supreme Court in Hussainbhai's case (supra)** and found on facts that there existed a relationship of employer and employee between the contesting parties. Consequentially, the orders were passed impugned in these writ petitions.

5. The learned counsel appearing for the petitioner has relied upon **'Gian Singh and Ors. v. Senior Regional Manager, FCI and Ors.** (1991-1) 99 PLR 1 to urge that the petitioners were justified to employ the contract labour under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It is contended that once the law permitted them to have resort to employ contract labour, the Labour Court was not justified in passing the award against the petitioner. It is submitted that the employees employed through the contractor would not become the employees of the principal employer.

6. Reliance has also been placed upon a judgment of the Supreme Court in **Dena Nath and Ors. v. National Fertilizers Ltd. and Ors**., (1992-I-LLJ-289) to strengthen the arguments advanced to the effect that the contract labour employed does not become the direct employees of the principal employer. The Supreme Court in this case in fact considered the scope of Contract Labour (Regulation and Abolition) Act, 1970 in relation to the authority under which such labour could be employed. It was held that the Act merely regulated the employment of contract labour in

certain establishment and provided for its abolition in certain circumstances. The Act has not totally abolished the contract labour but provided for the abolition by the appropriate Government in appropriate cases under Section 10. It appears that in both the cases, the law laid down by the Supreme Court in **Hussainbhai 's case (**supra) was not considered and rightly so the question regarding the existence of actual relationship after lifting of veil was neither agitated nor sought to be adjudicated by the parties in the said cases. The Supreme Court in Dena Nath's case (supra) held.

"It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered under Section 10 of the Act."

No such question was either raised before the Labour Court or is required to be adjudicated by us.

7. In a later judgment, the larger Bench of **the Supreme Court in R.K. Panda and Ors. v. Steel Authority of India and Ors. 1994 LIR 635** considered the plea of the contract labour and their right to regularization in the employment of the principal employer and held, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract laborer's by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. It was further held:

"It is true that with the passage of time and purely with a view to safeguard the interest of workers, many principal employers while renewing the contract have been insisting that the contractors or the new contractor retains the old employees. In fact, such a condition is incorporated in the contract itself. However, such a clause in the contract and documentary evidence produced before them."

Without referring to Hussainbhai's case (supra), the principle laid down therein was followed by the Supreme Court in this case as well.

8. On the admitted facts of the case it is to be ascertained as to whether after complying the principle of lifting of the veil, the existence of the relationship of workman and employer is surfaced or not. After critically examining the evidence led in the case, the Court below has concluded that there existed a relationship of employer and workman between the contesting patties and that the intermediatory contract was just an eye wash.

9. In the instant case, the undisputed position is that after the period of contract which expired on May 15, 1988, the respondent- workmen were retained in service under direct control and authority of the petitioner-employer. After referring to the evidence lead in the case and the provisions of the Labour Court found on facts:-

"For the reasons that the workmen were employed by HSEB through contractor Kashmiri Lal and which is proved from demand notice made by the workers to the HSEB Panchkula and Labour Officer-cum- Conciliation Officer and written to Labour Commissioner, Haryana, Chandigarh

Mark 'A' the attendance register copy showing the attendance of the workmen and in view of the authority laid down in Gurmeet Singh and Ors. v. Indian Iron Steel Co. Ltd and Ors. cited 1994 Lab I.C. 45 and in Hussainbhai v. Alath Factory Tozhilali Union and Ors. (supra) decided by the Hon'bie Supreme Court on July 28, 1978, 1 have no hesitation in holding that the workmen were employed by the HSEB, through contractor. They had not been approved by HSEB, Copy of the Deputy Secretary, Labour & Employment have sent the reference which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot itself give rise to a right of regularisation in the employment of the principal employer. Whether the contract Labourers have become the employees of he principal employee in the course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as had been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such question, only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer eliminating the contractor from the scene, is a matter which has to be established on material produced before the Court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are competent to adjudicate such disputes on the basis of the oral petition to this Court for decision. Even Shri A.P. Chaudhri, then Admitting that the attendance used to be marked by Junior Engineer and used to count workers brought by contractor. When suggestion was made to A.P. Chaudhri that the workers were retrenched by the Management, Mr. Chaudhri made the statement that as the work was over, so the workers were laid down.

For the above said reasons, I hold that the workmen were employed by the Management or that the termination of services of the workmen is invalid and I decide this issue in favour of the workmen"

10. The learned counsel for the petitioner had tried to argue that the findings of fact arrived at by the Labour Court was not based upon proper appreciation of evidence. This plea cannot be accepted in as much as the Labour Court has referred to the whole of the evidence led in the case before coming to such a conclusion. Otherwise, also in view of the law laid down by the Supreme Court in R.K. Panda's case (supra) the findings of fact arrived by the Labour Court cannot be set aside in writ jurisdiction particularly when it is neither perverse nor contrary to the record but based only on appreciation of evidence. Keeping in view the nature of the work being carried on by the petitioner, the nature of duties which were performed by the respondents- workmen, the continuity of the work for which the labour was employed and the fact that the wages were paid by the petitioner- employer who supervised and controlled not only the attendance but also discipline of the workmen in the discharge of their duties and keeping in view the conditions of contract of the employer with Kashmiri Lal, Contractor, there is no other conclusion which can be arrived at except the one that there existed a relationship of employer and workmen between the contesting parties and the Labour Court had rightly passed the award which is impugned in this petition.

11. It has been argued in the alternative that the Labour Court was not justified in directing the reinstatement of the respondents-workmen with continuity of service along with ten percent back wages. There appears to be some force in the submission of the learned counsel for the petitioner in as much as after the termination of the services of the workmen, the petitioner, which is a statutory body, has admittedly employed other workmen for carrying on the work earlier entrusted to the respondent-workmen. The learned counsel for the respondents, has however, conceded that he has no objection if the reinstatement of the workmen is directed without payment of back wages. In view of this statement of the learned counsel appearing for the respondents, the award impugned in the petition is modified by holding that workmen shall be reinstated with continuity of service but without backwages.

12. With the above modification in the award impugned in the present petition. Civil Writ Petition Nos. 16033 to 16040, 16042, 16101, 14893 to 14898, 14894. 11171, 17011 to 17014, 14457 to 14460 and 14613 of 1994 stand disposed of.