Indian Petrochemicals Corporation ... vs Shramik Sena And Ors on 4 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2577, 1999 AIR SCW 2740, 1999 LAB. I. C. 3078, 1999 (5) KANT LD 280, 1999 LAB LR 961, 1999 (4) SCALE 432, 1999 (7) ADSC 240, 1999 (4) LRI 1, 1999 (6) SCC 439, 1999 ADSC 7 240, 1999 (8) SRJ 202, (1999) 2 LABLJ 696, (1999) 6 SUPREME 542, (1999) 95 FJR 417, (1999) 2 RAJ LW 329, (1999) 4 SCALE 432, (1999) 2 ANDHWR 235, (1999) 2 CURLR 634, (1999) 3 SCT 815, 1999 SCC (L&S) 1138, (1999) 4 BOM CR 859, 1999 (3) BOM LR 704, 1999 BOM LR 3 704

Bench: S.P. Bharucha, R.C. Lahoti, N. Santosh Hegde

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           CASE NO.:
Appeal (civil)  1854 of 1998

PETITIONER:
INDIAN PETROCHEMICALS CORPORATION LTD. AND ANR.

RESPONDENT:
SHRAMIK SENA AND ORS.

DATE OF JUDGMENT: 04/08/1999

BENCH:
S.P. BHARUCHA & R.C. LAHOTI & N. SANTOSH HEGDE

JUDGMENT:
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JUDGMENT 1999 Supp(1) SCR 47 The Judgment of the Court was delivered by SANTOSH HEGDE, J. C.A. No. 1854/98 is an appeal preferred by M/s. Indian Petrochemicals Corporation Limited and another (hereinafter referred to as the management) against an order dated 29.8.1997 made by the High Court of Judicature at Bombay in W.P. No. 2206/97 filed by the Shramik Sena and another (hereinafter referred to as the workmen).

C.A. No. 1855/98 is an appeal filed by the workmen against the above- mentioned order of the High Court of Bombay. Both the appeals having been clubbed together, are heard and disposed of by this common judgment.

The workmen referred to above, filed the above writ petition before the High Court of Bombay for a declaration that the workmen whose names are shown in Ex. `A' annexed to the said petition, are the regular workmen of the management and are entitled to have the same pay-scales and service conditions as are applicable to regular workmen of the management. It was further prayed that a direction be given to the management to absorb the workmen listed in the said Ex. `A' with effect

from the actual date of their entering into the service of the canteen of the management and to pay them all consequential benefits including arrears of wages etc. According to the workmen, the workers listed in Ex. `A' to the petition are working in the canteen of the management in its factory at Nagothane, District Raigad in the State of Maharashtra, and the management was treating hem as persons employed on contract basis through a contractor named M/s. Rashmi Caterers, who was impleaded in the writ petition as respondent No. 5. It was contended on behalf of the above workmen that the factory of the management where the workmen are employed, is governed by the provisions of the Factories Act, 1948 (for short `the Factories Act') and the canteen where the said workmen are employed is a statutory canteen established by the management as required under the said provisions of the Act. It is further contended that the said canteen is maintained for the benefit of the workmen employed in the factory and the management had direct control over the said workmen and that respondent No.5, though shown as a contractor, has no control over the management, administration and functioning of the said canteen. The canteen is a part of the establishment of the management and the workers working in the canteen are the workmen of the said management. The further contention of the workmen was that the work carried on by them in the said canteen is perennial in nature and the canteen is incidental to and is connected with the establishment of the management. Therefore, the said workmen are regular workmen of the said management. The management is denying the said workmen the status of its regular employees and was treating them as contract employees contrary to the statutory provisions and judicial pronouncements of this Court.

On behalf of the management, it was contended before the High Court that it is a public sector undertaking and it cannot appoint any person in contravention of the recruitment policy which requires the management to follow a roster system. Therefore, apart from the fact that the workmen were not in the regular employment of the said management, the absorption or regularisation of the services of the said workmen would contravene Article 16(4) of the Constitution, and would also contravene the reservation policy which is applicable for recruitment in the establishment managed by it.

A perusal of the pleadings before the High Court shows that the petitioning workmen based their claim primarily on the ratio of the decision rendered by this Court in the case of Parimal Chandra Raha & Ors. v. Life Insurance Corporation of India & Ors., [1995] Supp. 2 SCC 611 (hereinafter referred to as Raha's case) with elaborately setting out the facts necessary for the purpose of ascertaining the true nature of employment of the workmen. The management also seems to have proceeded on the basis that the dictum in Raha's case, did apply to the facts of the case and hence defended against the prayer for regularisation on the grounds of recruitment policy and reservation orders without placing necessary factual matrix regarding the nature of employment.

The High Court in its judgment impugned in these appeals also proceeded on the basis of Raha's case upholding the contention of the workmen that in all establishments where canteens are maintained as a requirement of a statute, (namely, Section 46 of the Factories Act) the workmen working in the said canteen ipso facto became the regular workmen of the management. In the said view of the matter, the High Court allowed the writ petition, holding that since the workmen whose names were found in Annexure `A' to the petition are working in the statutory canteen of the

management, they are entitled to be absorbed in the employment of the said management.

While so disposing of the writ petition, the High Court gave the following directions in regard to absorption of the employees:

> "Respondent No. 1 should absorb the employees listed in Exhibit "A" to the petition, in its employment subject to their fulfilling the following conditions:-
>
> (a) At the time of initial appointment the workmen should be complying with the minimum and the maximum age limits prescribed under the policy of the Corporation;
>
> (b) They must be medically fit according to the standards prescribed by the Corporation;
>
> (c) Those who were appointed prior to the filing of the writ petition must have three years' minimum service to their credit on the date of the present judgment;
>
> (d) Those who were appointed during the pendency of the writ petition must have four years of minimum service to their credit on the date of the present judgment;
>
> (e) All those who are not absorbed in the service of the Corporation for any of the reasons indicated above, their cases shall be considered in accordance with the provisions of the Industrial Disputes Act. 1947 when fresh recruitment to the canteen staff is made by the Corporation;

All the workmen who are not absorbed for any of the conditions enumerated above, shall be given retrenchment compensation in accordance with law".

Being aggrieved by the said judgment and order of the High Court, as stated above, the management has preferred C.A. No. 1854/98 and being aggrieved by the conditions imposed while directing the absorption of the employees, on behalf of the workmen C.A. No. 1855/98 is preferred before this Court.

While these matters were being considered at the SLP stage for granting leave, a Division Bench of this Court considered that the questions involved in these appeals are of considerable importance and it will be desirable if the same is decided by a Bench of three judges. Consequently, they are now referred for hearing before this Bench.

When these matters were taken up for final hearing on 8.4.1999, on behalf of the employees reliance was placed on an additional affidavit dated 19,2.1999 filed on behalf of the workmen to which no reply was filed by the management. In the said affidavit, certain relevant facts had been pleaded on behalf of the workmen in addition to the facts placed before the High Court which facts had a material bearing on the case put forth by the workmen before the High Court as well as before this

Court. Therefore, we considered it appropriate that an opportunity should be afforded to the management to file a reply to the said affidavit and the said opportunity being afforded to the management, additional affidavit dated 10* July, 1999 has since been filed on behalf of the management.

Based on the above pleadings, it is contended before us on behalf of the management by Mr. T.R. Andhyarujina, learned senior counsel, that apart from the fact that the management being an instrumentality of State whose recruitment is governed by various reservation orders and its own recruitment policy which would be violated if the High Court's order is implemented, in fact the workmen are not entitled to absorption as directed by the High Court because these workmen are not in the employment of the management, being the workmen of the contractor who had entered into an agreement with the management for providing canteen services in the management's factory at Nagothane. He contended that in view of the provisions of the Factories Act it was obligatory for the management to provide canteen facilities in its establishment. Consequently, it had entered into a contract with the third party to provide the said facilities and the management only provided such infrastructure as was necessary under the Act and there was no relationship of'master1 and `servant' between the workmen and the management. He also contended that the High Court erred in coming to the conclusion that in view of the judgment of this Court in Raha's case (supra) the employees herein had an automatic right to be absorbed as regular workmen of the management. He contended that in Raha's case this Court did not hold that every workman of a statutory canteen automatically becomes a regular workman of the management, and argued if Raha's case did lay down such a proposition then the same requires reconsideration in view of an earlier judgment of a larger Bench of this Court in the case of M. M.R. Khan & Ors. v. Union of India & Ors., [1990] Suppl. SCC 191 (hereinafter referred to as Khan's case). He further contended that in the case of statutory canteens further evidence is required to establish that in reality the contractor's workmen are workmen of the management but in the instant case there was no material to hold that the appellant-management had employed these persons for and on behalf of itself to provide canteen services. He contended on the contrary, they were all employees of the contractor who was an independent employer and there was no obligation whatsoever on the part of the management towards the workmen. He also contended that the management had no supervision or controlling power over the workmen which power according to him wholly rested with the contractor. He also urged that so long as there was no prohibition of contract-labour under the provisions of the Contract Labour (Regulation and Abolition) Act the management was free to engage a contractor to provide canteen services in its establishment. He also contended whatever facilities and infrastructure that were provided to the canteen workmen same were only because the various statutes in the State of Maharashtra required the management to so provide and same were not voluntary.

On behalf of the workmen, it was contended by Mr. K.K. Singhvi, learned senior counsel, that the very fact that the management was required to statutorily provide canteen facilities to its factory staff under Section 46 of the Factories Act itself was sufficient to come to the conclusion that the workmen so employed to provide canteen facilities would become the regular employees of the principal employer. And the fact that these employees were employed through a contractor would not make any difference. In other words every workman of a statutory canteen, even if he is

employed through a contract system would by itself suffice is an employee of the management in view of Raha's case and that there was no further need for any enquiry to establish the factual matrix in regard to the relationship between the workmen and the management. Alternatively he contended that there was sufficient material on record to show that the respondent workmen were in fact employees of the appellant-management and induction of a contractor is only a facade to evade the responsibility to pay the legitimate wages and other dues of the workmen which amounts to unfair labour practice calling for a declaration from the Court that these workmen are the employees of the management.

At the outset, it must be recorded that Shri Andhyarujina conceded the fact that the Factories Act mandated the employer under Section 46 to provide canteen facilities to its workers, hence, the canteen run in the establishment of the management is what has now come to be termed as a statutory canteen and the workmen in these canteen do become the employees of the appellant-management, but only for the purpose of the Factories Act. Section 2(1) of the Factories Act defines a `worker' as follows:

> "worker" means a person (employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not) in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process (but does not include any member of the armed forces of the Union)"

It is clear from this definition that a person employed either directly or by or through any contractor in a place where manufacturing process is carried on, is a `workman' for the purpose of this Act. Section 46 of the Act empowers the State Government to make rules requiring any specified factory wherein more than 250 workers are ordinarily employed to provide and maintain a canteen by the occupier for the use of the workers. It is not in dispute, pursuant to this requirement of law, the management is providing canteen facilities wherein the respondent employees are working. Hence, it is fairly conceded by the learned counsel for the management that the respondent workmen by virtue of the definition of the `workman' under the Act, are the employees of the appellant-management for purposes of the Act.

The question however is: does this status of a workman under the Factories Act confine the relationship of the employer and the employees to the requirements of the Factories Act alone or does this definition extend for all other purposes which include continuity of service, seniority, pension and other benefits which a regular employee enjoys. The Factories Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits etc. These are governed by other statutes, rules, contracts or policies. Therefore, the workmen's contention that employees of a statutory canteen ipso facto become the employees of the establishment for all purpose cannot be accepted, The above argument of Mr. Singhvi is obviously based on the conclusion No.(i) noted in Raha's case (supra) wherein at para 25 of the judgment this Court recorded thus:

> "(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management. " (emphasis supplied).

Based on the above Shri Singhvi contends that once an employee is found by this Court to be an employee of the management because of the Factories Act, he becomes the employee of the management for all purposes. Per contra on behalf of the management, it is contended that a reading of the judgment in Raha's case in its totality shows that what this Court intended to lay down as law was that the employees working in a statutory canteen would become employees of the management not for all purposes but for the limited purpose of the Factories Act. It is to be noted that in Raha's case this Court did not specifically hold that the deemed employment of the workers is for all purposes nor did it specifically hold that it is only for the purpose of the Factories Act. However, a reading of the judgment in its entirety makes it clear that the deemed employment is only for the purpose of the Factories Act. This Court in Raha's case relied upon an earlier judgment of this Court in M.M.R. Khan & Ors. v. Union of India & Ors., [1990] suppl. SCC 191. A three-Judge Bench of this Court considering the provisions of the Factories Act held that by virtue of Section 46 of the said Act the factories covered by the said Act are obligated to provide canteen services and termed such canteens as statutory canteens. In para 6 of the said judgment while referring to an earlier judgment of this Court in C.A. No. 368/78, this Court held thus:-

> "The Act referred to in the aforesaid order obviously means the Factories Act. Therefore, what was confirmed by this Court was the declaration given by the Calcutta High Court that the employees of the statutory canteens were railway employees for the purposes of the Factories Act....."

(emphasis supplied) Thereafter, in the said judgment (Khan's case) this Court at para 20 proceeded to consider the question as to whether staff employed in the statutory canteen in the railway establishment, industrial or non- industrial are railway employees or not.

And concluded thus at para 28:-

> "Thus the relationship of employer and employee stands created between the railway administration and the canteen employees from the very inception. Hence, it cannot be gainsaid that for the purposes of the Factories Act the employees in the statutory canteens are the employees of the railways. The decisions of the Calcutta and Madras High Courts (supra) on the point, therefore, are both proper and valid."

(emphasis supplied) Thereafter of course, in the said case this Court on facts came to the conclusion, the employees concerned therein were in fact employees of the establishment.

If the argument of the workmen in regard to the interpretation of Raha's case is to be accepted then the same would run counter to the law laid down by a larger Bench of this Court in Khan's case (supra). On this point similar is the view of another three-Judge Bench of this Court in the case of

Employers in relation to the Management of Reserve Bank of India v. Workmen, [1996] 3 SCC 267). Therefore, following the judgment of this Court in the cases of Khan and R.B.I, (supra), we hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes.

Having held that the workmen in these appeals are the respondent's workmen for the purposes of the Factories Act. we will now deal with the next question arising in this appeal as to whether from the material on record it could be held that the workmen are in fact, the employees of the management for all purposes.

Before answering this question, we would like to observe that, normally, this being a question of fact, this Court would have been reluctant to examine this question which in the ordinary course should be first decided by a fact-finding tribunal. However, as stated above, in this case parties have filed detailed affidavits and documents which in our opinion, are sufficient for us to decide this question without the need for any oral evidence.

Though the canteen in the appellants establishment is being managed by engaging a contractor, it is also an admitted fact that the canteen has been in existence from inception of the establishment. It is also an admitted fact that all the employees who were initially employed and those inducted from time to time in the canteen have continued to work in the said canteen uninterruptedly. The employer contends that this continuity of employment of the employees, in spite of there being change of contractors, was due to an order made by the Industrial Court, Thane, on 10th of November 1994 wherein the Industrial Court held that these workmen are entitled to continuity of service in the same canteen irrespective of the change in the contractor. Consequently, a direction was issued to the management herein to incorporate appropriate clauses in the contract that may be entered into with any outside contractor to ensure the continuity of employment of these workmen. The management, therefore, contends that the continuous employment of these workmen is not voluntary. A perusal of the said order of the Industrial Court shows that these workmen had contended before the said court that the management was indulging in an unfair labour practice and in fact they were employed by the Company. They specifically contended therein that they are entitled to continue in the employment of the Company irrespective of the change in the contractor. The Industrial Court accepted their contention as against the plea put forth by the management herein. The employer did not think it appropriate to challenge this decision of the Industrial Court which has become final. This clearly suggests that the management accepted as a matter of fact the respondent- workmen are permanent employees of the management's canteen. This is a very significant fact to show the true nature of respondent's employment. That apart, a perusal of the affidavits filed in this Court and the contract entered into between the management and the contractor clearly establishes:-

(a) The canteen has been there since the inception of the appellant's factory.

(b) The workmen have been employed for long years and despite change of contractors the workers have continued to be employed in the canteen.

(c) The premises, furniture, fixture, fuel, electricity, utensils etc, have been provided for by the appellant.

(d) The wages of the canteen workers have to be reimbursed by the appellant.

(e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor,

(f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(g) The workmen have the protection of continuous employment in the establishment.

Considering these factors cumulatively in addition to the fact that the canteen in the establishment of the management is a statutory canteen, we are of the opinion that in the instant case, the respondent-workmen are in fact the workmen of the appellant-management.

At this stage, it is necessary to note another argument of Mr. Andhyarujina that in view of the fact that there is no abolition of contract labour in the canteen of the appellant's establishment, it is open to the management to manage its canteen through a contractor. Hence, he contends that by virtue of the contract entered into by the management with the contractor, the respondent-workmen cannot be treated as the employees of the management. This argument would have had some substance if in reality the management had engaged a contractor who was wholly independent of the management, but we have come to the conclusion on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this case are in fact the workmen of the management. In the background of this finding, the last argument of Mr. Andhyarujina should also fail.

For the reasons stated above, this appeal of the management fails and is hereby dismissed with costs.

C.A. No. 1855/1998:

In this appeal, the workmen have questioned the conditions that have been imposed by the High Court while directing regularisation of the workmen. They contend that once the court comes to the conclusion that the workmen are in fact the employees of the management, there is no occasion to impose these conditions. We are unable to agree with this argument. It should be borne in mind that the initial appointments of these workmen are not in accordance with the rules governing the appointments or the established policy of recruitment of the management. The said recruitments could also be in contravention of the various statutory orders including the reservation policy. Further the respondent is an instrumentality of the State and has

an obligation to conform to the requirements of Articles 14 and 16 of the Constitution. In spite of the same the services of the workmen are being regularised by the Court not as a matter of right of the workmen arising under any statute but with a view to eradicate unfair labour practices and in equity to undo social injustice and as a measure of labour welfare. Therefore, it is necessary that in this process suitable guidelines or conditions be laid down at the time of Courts issuing directions to regularise the services of the workmen so concerned depending upon the facts of each case. This Court has consistently followed this practice in the earlier cases of regularisation and we do not find any reason to differ from the same. For the aforesaid reasons, this appeal also fails and the same is dismissed but with costs.