Rourkela Shramik Sangh vs Steel Authority Of India Ltd. & Anr on 29 January, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1060, 2003 (4) SCC 317, AIR 2004 (NOC) 454 (MAD), 2003 AIR SCW 581, 2003 LAB. I. C. 773, (2003) 1 JT 465 (SC), 2003 (3) SRJ 480, 2004 (3) KCCR 2052, (2003) 3 KCCR 2052, (2003) 4 ALLINDCAS 365 (SC), 2003 (4) ALLINDCAS 365, (2003) 1 SCR 704 (SC), 2003 (1) UPLBEC 563, 2003 (1) SCALE 556, 2003 (1) ACE 666, 2003 (1) SLT 667, 2003 (1) JT 465, (2003) 2 TAC 393, (2003) 3 ACC 64, (2003) 3 ACJ 2072, (2003) 3 CIVLJ 522, (2003) 3 MAD LW 712, 2003 SCC (L&S) 456, (2003) 103 FJR 1, (2003) 2 ANDH LT 58, (2004) 2 RECCIVR 308, (2003) 96 FACLR 1039, (2003) 1 LABLJ 849, (2003) 1 LAB LN 772, (2003) 2 MAD LJ 49, (2003) 1 SCT 806, (2003) 2 SERVLR 51, (2003) 1 UPLBEC 563, (2003) 4 SUPREME 121, (2003) 1 SCALE 556, (2003) 2 INDLD 1110, (2003) 2 ALL WC 889, (2003) 1 CURLR 615, (2004) 2 CIVILCOURTC 348

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Bench: Chief Justice, S.B. Sinha, A.R. Lakshmanan

CASE NO.:
Appeal (civil) 639 of 2003

PETITIONER:
Rourkela Shramik Sangh

RESPONDENT:
Steel Authority of India Ltd. & Anr.

DATE OF JUDGMENT: 29/01/2003

BENCH:
CJI,S.B. Sinha & A.R. Lakshmanan.

JUDGMENT:

J U D G M E N T (Arising out of S.L.P. (Civil) No.14567 of 2000) S.B. SINHA, J :

Leave granted.

Interpretation of an order passed by this Court in R.K. Panda & Others. vs. Steel Authority of India and Others [(1994) 5 SCC 304] is in question in this appeal which arises out of the judgment and order dated 25th May, 2000 passed by the High Court

of Delhi in L.P.A. No.335 of 1998 whereby and whereunder an appeal preferred by the appellant from the judgment and order dated 15th July, 1998 passed by a learned Single Judge of the said Court dismissing the writ petition filed by the appellant was upheld.

The basic fact of the matter is not in dispute. The workers of the Rourkela Steel Plant filed a writ petition before this Court, inter alia, for a direction that they be held to be entitled to be paid the same pay as is paid to the regular employees and be treated as such on the premise that they had been employed by various contractors and were doing jobs which are perennial in nature and identical to what were being done by regular employees of the Plant. This Court having regard to the various interim orders passed from time to time did not relegate the workmen to avail the remedies under the Industrial Disputes Act, 1947 and, inter alia, directed :-

"(i) All labourers, who had been initially engaged through contractors but have been continuously working with the respondent for the last ten years on different jobs assigned to them in spite of the replacement and change of the contractors, shall be absorbed by the respondent, as their regular employees subject to being found medically fit and if they are below 58 years of age, which is the age of superannuation under the respondent. xxx xxx xxx xxx

(vi) The respondent shall be at liberty to retrench workmen so absorbed, in accordance with law.

This order shall not be pleaded as a bar to such retrenchment.

(vii) If there is any dispute in respect of the identification of the contract labourers to be absorbed as directed above, such dispute shall be decided by the Chief Labour Commissioner (Central), on material produced before him by the parties concerned.

(viii) This direction shall be operative only in respect of 142 jobs out of 246 jobs, in view of the fact that contract labour has already been abolished in 104 jobs."

The appellants therein, however, filed interlocutory applications for directions marked as I.A. Nos. 8 and 9 of 1991 before this Court wherein the following prayers were made :-

"(a) That the respondents be directed to regularize the service of all the workmen working in any of the 246 jobs at the time of filing of this petition and continuously working since then;

(b) Clarify that the standards of medical fitness to be applied in case of these workmen should be the standards used for regular workmen for their retrenchment;

(c) Clarify that this judgment dated 12.5.94 would also apply to those workmen who had been retrenched in 1990 and 1992 and have not yet been taken back in employment;

(d) Direct the respondents to pay wages to those 292 workmen who were kept out of employment for the period 22.5.89 to 30.11.89, contrary to the orders of this Court."

Prayers (a) and (b) were not pressed and in relation to prayers (c) and

(d), this Court clarified that if any of the workmen is not absorbed/regularized despite this Court's directions/orders, the workmen concerned would be at liberty to pursue any other remedy or may approach any other authority prescribed under law.

Pursuant to or in furtherance of the said directions of this Court (quoted supra), 5340 applications were received and out of said applicants 2677 applicants were found eligible for absorption by the management. Cases of 2663 workmen were referred to the Chief Labour Commissioner (Central) in terms of the said judgment.

In its order dated 4th January, 1995, the Chief Labour Commissioner (Central) New Delhi put the workmen in eight different categories which are as under :-

"Category 1 : Applicants otherwise eligible but above 58 years of age.

Category 2 : Applicants above 58 years of age and also otherwise not ineligible for not completing ten years of continuous working.

Category 3 : (A) Not completed ten years of continuous working on the applicant's own declarations.

Category 3 : (B) Applicant admits gap in claim for continuous working for ten years.

Category 4 : Applicants claimed 10 years of continuous working in the jobs continuing to exist but not established on the basis of records enclosed with the application and those available with the Department including E.S.I. registration date.

Category 5 : Applicants claimed 10 years of continuous working had not substantiated only due to short gap in finalization and award of the concerned contract.

Category 6 : Applicants claimed more than 10 years of continuous working admitting gap to the period of 10 years which corresponds to the actual short gap in finalisation and award of the contract.

> Category 7 : Applicants claimed 10 years of continuous working or admitted that gap in contract having short gap in finalisation and award of contract but claim not established even otherwise on the basis of records enclosed with the applications and those available within department including E.S.I. registration date.
>
> Category 8: Claim not entertained as names of claimants do not appear in the wage sheets of covered jobs."

The said authority further laid down a criteria that the matter relating to identification of the concerned workmen and determination of their period of work would be made on the basis of the Employees State Insurance Card and Employees Provident Fund Card. Applying the said norm he arrived at a finding that 360 workmen were eligible for absorption. The appellant Association filed an application for review before the Chief Labour Commissioner (Central) on 31st January, 1995 and upon consideration of the matter again he found that 523 workmen were also eligible for absorption.

In support of the said finding he assigned sufficient and cogent reasons. The said order was implemented by the respondent herein.

The appellants therein filed an interlocutory application marked as I.A. No.10 of 1995 on 24th July, 1995, praying for the following reliefs :

> "(a) direct the respondents to take back those 1800 and odd workmen who had been illegally retrenched by the respondents on 10.4.95 and not to retrench them until there is a need for retrenchment on the ground of surplusage of labour;
>
> (b) direct that all those workmen who had completed 10 years of service by 10.4.1995 would be eligible for regularization."

However, when the matter came up for consideration before this Court on 16th October, 1995, they sought leave to withdraw the said petition whereupon, the following order came to be passed :-

> "The applicant may, if so advised, seek a reference of any fresh alleged dispute which has arisen between the workmen and the management or approach the authority in accordance with law. The I.A. is dismissed as withdrawn."

We may notice that in the said application, the appellants therein made the aforementioned prayers, inter alia, alleging :-

> "That thereafter, after various hearing and reports sought and given by the Deputy Chief Labour Commissioner (Central), Dhanbad, the Chief Labour Commissioner (Central) finally passed an order dated 1.5.95 by which he directed another 522 workmen to be eligible; thus, still leaving out approximately 1800 workmen out of those who had applied for regularization on the basis that they had put in more than 10 years continuous service.

> That the Chief Labour Commissioner (Central) while deciding the applications of the workmen took cognizance of only the entry date in the Employees State Insurance Registration Card and the Employees Provident Fund declaration forms. This was despite the fact that the Employees State Insurance Registration Card of a large number of workmen were not made till 1986 and despite the fact that the Provident Fund declarations were also not done by the contractors in respect of many workmen till 1986 when this petition was filed in this Court. In those cases, the workmen were not given Employees State Insurance Registration cards and Employees Provident Fund declarations prior to 1986. The workmen concerned, therefore, produced various documentary evidences of their employment since 1984 such as wage sheets signed by the officers of the principal employer, contractor and the workmen, Annual Provident Fund account slips, Service Certificates issued by the Contractor/officers of the Respondent company, tripartite agreements giving the names of the workmen, identity cards, wages slips etc."

It was further alleged :

> "..The fact is that the retrenchment of these 1800 workmen is not a planned one or retrenchment forced due to surplusage of labour but merely an attempt to get rid of these workmen who had the courage to approach this Hon'ble Court for relief. In fact, all these workmen were, in fact and in law, employed through contractors. They were clearly covered by the principles laid down by this court in the recent decision of Justice P.B. Sawant in Gujarat Electricity Board versus Hind Mazdoor Sabha & Ors. JT 1995 (4) SC 264. It was unfortunately, however, this Hon'ble Court could not go into the question whether these workmen were in fact and in law entitled to be considered to be employed by the Respondent company in this writ petition. The petitioners now will have to approach the Industrial Tribunal for this, which would take considerable time. In the meanwhile, these 1800 workmen and their families are on the streets. It may also be pointed out that the management of Rourkela Steel Plant have not yet complied even with the orders of the Chief Labour Commissioner (Central) dated 1.5.1995 in which he had held another 523 workmen to be eligible for regularsation."

It is, thus, evident that the contentions raised herein and in the said interlocutory application, are identical.

Despite the aforementioned order dated 16th October, 1995, the writ petition was filed by the appellant herein which was marked as C.W.P. No.2963 of 1995. By an order dated 15th July, 1998, the said writ petition was dismissed. Aggrieved thereby, the appellant filed a L.P.A. which was also dismissed by reason of the impugned order.

Mr. Shanti Bhushan, learned Senior Counsel appearing on behalf of the appellant, has raised two contentions in support of this appeal. Firstly, it was submitted that keeping in view the clear and unequivocal directions of this Court in the aforementioned judgment, the Chief Labour

Commissioner (Central) could not have directed that the identity of the concerned workmen would be established only with reference to the E.S.I. Card or P.F. Card although several workmen had various documents in their possession, e.g., identity card, service certificate, wage-sheet etc. to prove their case. It was next submitted that some workmen had even been retrenched during the earlier proceedings despite an order of injunction having been passed in that behalf, and, thus, were entitled to the benefit of the judgment of this Court. The learned counsel would submit that the approach of the High Court in passing the impugned judgment must be held to be erroneous inasmuch the writ petition could not be dismissed only because the appellant withdrew I.A. No.10 of 1995 wherein the said order dated 16th October, 1995 was passed. It was submitted that the reliefs prayed for in the said interlocutory application had nothing to do with the subject matter of the writ petition which was disposed of by this Court.

Mr. Shanti Bhushan would further urge that as the High Court is also an authority, the appellants herein could also file a writ petition pursuant to or in furtherance of the observations made by this Court in its order dated 16th October, 1995.

Mr. C.S. Vaidyanathan, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted that the appellants having filed I.A. No. 9 of 1991 and I.A. No. 10 of 1995 before this Court raising identical questions could not raise the same again by filing an application under Article 226 of the Constitution of India and the remedy therefor available to them, if any, was merely to approach the Industrial Court in terms of the provisions of the Industrial Disputes Act.

Mr. Vaidyanathan would contend that at the later stage of the enquiry, the Chief Labour Commissioner, Central, had also taken into consideration other documents produced by the workmen and arrived at a finding that no reliance can be placed thereupon.

The question as to whether the concerned workmen had been continuously working for a period of ten years so as to enable them to derive benefit of the judgment of this Court in R.K. Panda's case was essentially a question of fact. The Chief Labour Commissioner (Central) while determining the said question was not acting as a statutory authority. He was merely acting pursuant to or in furtherance of the directions of this Court.

The appellants herein, as noticed hereinbefore, immediately after the pronouncement of the judgment of this Court apprehended that a large number of workmen may be retrenched. They, therefore, sought for clarification by filing the aforementioned I.As. No. 8 and 9 of 1991, which as noticed hereinbefore, were disposed of directing that in the event they are aggrieved by an order of the Chief Labour Commissioner (Central), they may take recourse to such proceedings as are available to them in law.

It is interesting to note that in the interlocutory application marked as I.A. No.10 of 1995, the appellants themselves stated :

> "The petitioners now will have to approach the Industrial Tribunal for this, which would take considerable time. In the meanwhile, these 1800 workmen and their

families are on the streets.."

There cannot, thus, be any doubt whatsoever that the appellants were fully aware of the fact that they were required to approach the Industrial Tribunal in terms of the provisions of the Industrial Disputes Act for ventilating their grievances. The submission of Mr. Shanti Bhushan to the effect that the High Court acts as an authority while exercising its power under Article 226 of the Constitution of India cannot be countenanced. The order of this Court dated 16th October, 1995, as quoted supra, is absolutely clear and unambiguous. The term 'authority' used in this Court's order dated 16th October, 1995 must be read in the context in which it was used. The appellant in terms thereof could seek a reference which would mean a reference in terms of Section 10 of the Industrial Disputes Act. It could also approach 'the authority in accordance with law' which would mean authority under a statute. The High Court, by no stretch of imagination, can be an authority under a statute.

Furthermore, even otherwise, a disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others [(2001) 7 SCC 1]. In any event, the orders of the Chief Labour Commissioner dated 4th January, 1995 also shows that other documents which were placed on record by the workmen had also been scrutinized and they had not been found reliable.

We are, therefore, of the opinion that no case has been made out for interference with the impugned judgment.

This appeal is accordingly dismissed but in the facts and circumstances of the case, there shall be no order as to costs.