Allahabad High Court
Shamli Mill Sramik Sangathan vs Industrial Tribunal (V) And Anr. on 27 January, 2004
Equivalent citations: 2004 (2) AWC 1538, 2004 (101) FLR 344, (2004) 2 UPLBEC 1223
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Bench: R Tiwari
JUDGMENT Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.

2. The petitioner is Trade Union registered under the Indian Trade Union Act, 1926 and draws its membership from amongst the employee of the Upper Doab Sugar Mills Ltd., Shamli. The State Government being satisfied that an industrial dispute existed on account of the demand of a large number of workmen for being made seasonal workmen and in exercise of its powers under Section 4K of the U. P. Industrial Disputes Act, 1947 (hereinafter referred to as the U.P. Act) referred the matter in dispute relating to 50 workmen for adjudication to respondent No. 1 by order No. 5255 dated 14.12.1977 for adjudication. The labour court referred the reference by order dated 22.12.1983 holding that it was not an industrial dispute.

3. The case as set out on behalf of the petitioner was that the 50 workmen concerned in the dispute worked in processes which were normal part of the industry and without the discharge of the type of work that they were doing the industry could not be run. It was claimed that they were working under the direct supervision of Company's officers, were being given minimum wages as per Government Notification, were being granted leave facilities and Provident Fund facilities, etc. but they were not being treated as seasonal employees of the Company and were thus being deprived of retaining allowance under the standing orders framed by the State Government in exercise of its powers under Section 3 (b) of the U. P. Act which were applicable to the Pan Vacuum Sugar Factories. It was also claimed that Sri O. P. Garh was introduced by the respondent company as a contractor only to work out a device for devising them of various benefits of their status of regular seasonal employees.

4. The case as set out on behalf of the respondent company was that the 50 workmen concerned in the dispute were not in regular employment of the company, their work was not being supervised by the officers of the Company that the demand for their regularisation had earlier not been referred for adjudication by the State Government, that the dispute referred was not an industrial dispute and no relationship of master and servant existed between the 50 workmen concerned and the respondent company hence, they were thereafter not entitled to any relief whatsoever.

5. The Tribunal came to the conclusion that the 50 workmen concerned were employees of the contractor and there was no relationship of master and servant. The Tribunal also came to the conclusion that no reason was given why the State Government when it revised its earlier decision and made the reference.

6. Counsel for the petitioner submits that the 50 workmen concerned were engaged in the discharge of such work which was a normal part of industry and therefore the respondent company was their

employer notwithstanding the device of introduction of a contractor. He also contends that even if it is assumed for arguments sake that the employment of the 50 workmen concerned in the dispute was through a contractor they would be the employees of the respondent company as Company would be their employer under the Act. He further contends that the Tribunal acted in excess of its jurisdiction vested in it by law by holding that there was no justification for making the reference. There was no fetter on the powers of the State Government to make a reference at any time and even though it may have earlier refused to make a reference.

7. It is submitted on the aforesaid basis that the findings of the labour court are perverse and are based on wrong application of the Contract Labour (Regulation and Abolition) Act.

8. The labour court has given a categorical findings of fact that :

"I have gone through the material on record and have heard the arguments, regarding the preliminary issue No. 1 whether the present matter of dispute was not an industrial dispute for the reasons pleaded by employers in paras 1, 22 and 25 of their written statements. The pleas taken in the above paras were that there was no relationship of master and servant between the concerned workmen and the employers and that there was no dispute between the factory and its workmen and the union and had raised the dispute merely to confuse and complicate the matter and again in para 25 that the dispute, if any, could arise against the contractor in whose employment the persons involved worked and not the mills. As these pleadings are also relevant for issue No. 2 I take both the issues Nos. 1 and 2 together. Issue No. 2 was whether there was no relationship of master and servant, if not its effect. On consideration of the evidence led by the parties on this matter I find that the employers have produced weighty evidence both oral and documentary of the Deputy Chief Engineer and the contractor along with the pay sheets for a number of years which clearly shows that the workmen concerned were the employees of the contractor. There is nothing to cast any doubt on the authenticity of the pay sheets which clearly show that the workmen concerned were the employees of the contractor for a number of years and were signing or putting their thumb impressions in lieu of the receipt of their wages. The denial by the witness Gyana is not supported by any documentary evidence. He has stated that the workmen concerned did not get any appointment letter from the mills for any reason. He did not even know who went to call him to join duties at the start of the seasons and no token or ticket was ever issued to him. The more fact that he got wages and bonus, etc. or that provident fund was being deducted according to law cannot prove that the workmen concerned were not employees of the contractor which was amply proved by the documentary evidence of the pay sheets furnished by the contractor and the evidence of the contractor and the Deputy Chief Engineer of the factory. The work of bagasse baling is permitted to be done by the contractor's men and from the evidence before me it would appear that the work of bagasse baling was being done by the concerned workmen..... In view of the above finding that the workmen concerned were contractor's men as permitted to work under the Contract Labour (Regulation and Abolition) Act and the notification of the State Government Ext. E-3 dated 3.2.1972 about contract labour which permitted bagasse baling to be done by the contractor's labour at Sl. No. 22 of the notification, I find that the present reference was not justified."

The findings of the labour court that there was no relationship of master and servant between M/s. Upper Doab Sugar Mills and the workmen concerned is one of the reason. The Tribunal has held that concerned workmen were contractor's men and were doing the work of bagasse baling which was permitted according to the Government notification to be done by the contract labour.

9. In the case of Steel Authority of India the Apex Court has held that if contract agreement was genuine the employees of the contractor will not be treated as employees of principal employer. In this case, the findings recorded by the Tribunal shows that contractor was not a sham element but a genuine one. Hence the findings recorded by the Tribunal can not be interfered with.

10. It is also noteworthy that this dispute was raised in 1977, 17 years have passed. Contract labour has not been abolished in this industry which is a seasonal industry. The matter is too stale. No interference is required at this stage.

11. In this view of the matter, there is no illegality or infirmity in the impugned award of the Tribunal.

12. For the reasons stated above, the writ petition is dismissed. No order as to cost.