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Hukum Chand v. Industrial Tribunal, Jaipur, (Rajasthan)(Jaipur Bench) : Law Finder Doc Id # 832520

2017(1) W.L.N. 348 : 2017(1) WLC (Raj.)(UC) 293

RAJASTHAN HIGH COURT

(Jaipur Bench)

Before:- **Dr. Pushpendra Singh Bhati, J.**

S.B. Civil Writ Petition No. 5043 of 2005. D/d. 2.1.2017.

Hukum Chand and Anr - Petitioners

Versus

Industrial Tribunal, Jaipur and Anr. - Respondents

For the Petitioner :- Mr. **C . P . Sharma** , Advocate.

For the Respondent :- Mr. Harsh Vardhan Nandwana, Advocate.

Industrial Disputes Act, 1947 Section 25F Continuous service since 1994 - Regularisation - Petitioners are continuously discharging their duties on minimum wages through contractor for Municipal Corporation - Respondents are directed to consider the case of the petitioners for regularization keeping in view the regularization of other similarly situated persons - Petition disposed of.

[Para 7]

Cases Referred :-

[Balwinder Singh v. Punjab State Electricity Board, Patiala, SCT 2011 \(4\) P 231 Appeal No. 102, decided on 19.4.2011.](#)

[Bhilwara Dugdh Utpadak Sahakari S. Ltd v. Vinod Kumar Sharma, SCT 2011 \(4\) P 120 : Civil Appeal No.2585 of 2006, decided on 1.9.2011.](#)

JUDGMENT

Dr. Pushpendra Singh Bhati, J. - The petitioner No.1 was appointed in April 1993 and petitioner No.2 was appointed in October 1992 as Helper with the respondents-department. The petitioners preferred this joint writ petition challenging the award of the Tribunal dated 3/3/2005 and also claimed setting aside their termination order dated 31/10/1994 with all consequential benefits. The petitioners had preferred a claim petition through Union which

was heard by the learned Industrial Tribunal, Jaipur on the following points of reference:-

"whether the Office of Assistant Engineer, Motor Garage, Chougan Stadium, Gangouri Bazar, Jaipur had not been given regular appointment with all consequential benefits and had wrongly terminated the service of the petitioners w.e.f. 31/10/1994?"

2. Learned Industrial Tribunal was of the view that the petitioners could not support their case with the help of documents and none of the affidavits carried the facts that the petitioners had discharged 240 days of regular service. The learned Court below has held that since the services for 240 days and one year was not established by the documents furnished and facts mentioned by the petitioners. Therefore, the controversy does not fall within the domain of protective legislation of Section 25F of Industrial Dispute Act, 1947. Thus, the claim petition of the petitioners were dismissed.

3. The Petitioners preferred proceedings under Minimum Wages Act, 1948 before the Court concerned whereby the Petitioners claimed minimum wages with effect from their date of appointment in 1993-94 respectively. The learned Authority recorded the statements of the petitioners that the petitioners were in continuous service even after April, 1994 and were receiving wages. The learned Authority also recorded that it is reflected by the documents that daily four hours overtime was rendered by the petitioners and therefore the petitioners were entitled for overtime payment for overtime payment under Section 20 sub-Section 2 of the Minimum Wages Act, 1948 whereby the petitioners were entitled for overtime payment for a period of six months. Thus, the order dated 27/10/1997 directed the respondents to grant the benefits of overtime keeping in mind the provisions under Section 20 sub-Section 2 of the Minimum Wages Act, 1948.

4. In the reply filed by the respondents before this Court it was claimed by the respondents that the petitioners never served upon the respondents-department, they served for M/s Karni Enterprises which used to supply manpower on the contract to various departments and government undertakings.

5. Learned counsel for the petitioners relied upon the judgment passed in case of ***Bhilwara Dugdh Utpadak Sahakari S. Ltd v. Vinod Kumar Sharma in Civil Appeal No.2585/2006 decided on 1/9/2011 (reported in SCT 2011 (4) P 120)*** whereby the Hon'ble Supreme Court held that the employers were resorting to declare the workmen on contract by the contractor which is a tactics to defeat the protection available to the employees. The relevant portion of the judgment as follow:-

"7. The facts of the case are given in the judgment of the High Court dated 23/8/2004 and we are not repeating the same here. It has been clearly stated therein that subterfuge was resorted to by the appellant to show that the workmen concerned were only workmen of a contractor. The Labour Court has held that the workmen were the employees of the appellant and not employees of the contractor. Cogent reasons have been given by the Labour Court to come to this finding. The Labour court has held that, in fact, the concerned workmen were working under the orders of the officers of the appellant, and were being paid Rs. 70/- per day, while the workmen/employees of the contractor were paid Rs.56/-per day.

11. Mr Puneet Jain, learned counsel for the appellant submitted that the High Court has wrongly held that the appellant resorted to a subterfuge, when there was no such finding by the Labour Court. The Labour Court has found that the plea of the employer that the respondents were employees of a contractor was not correct, and in fact they were the employees of the appellant. In our opinion, therefore, it is implicit in this finding that there was subterfuge by the appellant to avoid its liabilities under various labour statutes."

6. The Counsel for the petitioners also relied upon the Division Bench's judgment of Punjab and Haryana High Court in case of **Balwinder Singh v. Punjab State Electricity Board, Patiala & ors. in Letters Patent Appeal No. 102/2011 decided on 19/4/2011 (reported in SCT 2011 (4) P 231)** the relevant paras of the Judgment as follows:-

"4. Learned counsel for the appellants has taken us elaborately through the award of the learned Labour Court, particularly the findings recorded on a point of existence of master and servant relationship between the workmen and the principal employer. Learned counsel has also urged that the contractor in question was not registered under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act') and, therefore, the Court ought not to take notice of the engagement of the workmen through the contractor.

7. For the aforesaid reasons, we do not consider the present appeals to be appropriate for admission. All the appeals are consequently dismissed by refusing admission."

7. The counsel for the petitioner also relied upon the affidavit filed on behalf of the petitioners whereby it has been categorically stated that the petitioners have been in continuous service and are receiving minimum wages from the Municipal Corporation through the contractor in light of the order dated 27/10/1997. In view of the submissions made by the counsel for the petitioners and the reply filed by the respondents, this is a case where the petitioners are continuously discharging their duties on minimum wages through contractor for the Municipal Corporation and, therefore, I deem it appropriate to direct the respondents to consider the case of the petitioners for regularization keeping in view the regularization of other similarly situated persons mentioned in the affidavit by the petitioners, in accordance with law after screening their candidature within a period of three months from today.

8. The writ petition is accordingly disposed off.

Petition Disposed of.

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