

Management of Jharkhand State Vs. Workman Represented by the Gen

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Court : Jharkhand

Decided On : Jun-21-2017

Appellant : Management of Jharkhand State

Respondent : Workman Represented by the Gen

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(L) No. 3117 of 2012 ---
The Management of Jharkhand State Co-operative Lac Marketing and
Procurement Federation Ltd. (LAMPF), through its Managing Director, Ranchi. ---
---- Petitioner Versus The Workman represented by the General Secretary,
Jharkhand General Kamgar Union, Chutia, Ranchi. --- --- Respondent ---
CORAM: The Honble Mr. Justice Aparesh Kumar Singh ---- For the Petitioner : Mr.
Mrinal Kanti Roy, Adv. For the Respondent : In Person. ---- 07/21.06.2017 Heard
learned counsel for the petitioner and the respondent- Union represented through
its General Secretary. The following reference was made to the learned Labour
Court, Ranchi by notification dated 08th September, 2009 issued by the
Department of Labour, Employment and Training, Government of Jharkhand
(Annexure-1) :- (i) Whether not to make the services of 09 adhoc employee (list
enclosed) permanent is justified? If not what relief the workman is entitled to? (ii)
Whether the payment of 34 workmen (list enclosed) on daily basis is justified? If
not what relief they are entitled to? Pursuant thereto Reference Case No. 10 of
2009 was registered before the learned Labour Court, Ranchi. Workmen filed their
written statement which is at Annexure-2 and made the following assertion. That

09 workmen were temporary while 34 were permanent in nature. Irrespective of the fact whether one was permanent or temporary, wages for un-skilled workmen were paid to them, though they were entitled to salary and other benefits of equivalent to a 4th grade employee. 34 such workmen made a claim for being declared permanent and for grant of benefits equivalent that of a 4th grade employee while 09 such workmen sought permanence from the date they had completed 240 days in a calendar year. The management also filed their written statement which is at Annexure-3. Apart from raising plea of maintainability of the reference, they contended that workmen engaged on -2- casual basis, cannot be granted permanent status in view of the judgment of Hon'ble Supreme Court in the case of State of Karnataka and others Vs. Uma Devi and others, reported in AIR 2006 SC1806. The number of workmen referred to in the notification were also disputed on the part of the management. According to them, there are no adhoc employee appointed under the management, 7 persons were engaged as casual worker in the year 2004-05 to meet the requirements of the work related to Chauri Project whose names were indicated therein. In respect of 34 workmen covered under item no. 2, they took the stand that they were engaged prior to those who were engaged in respect of item no.

1. In fact, only 26 workmen were still working on daily wages basis. They were, in fact, engaged by the erstwhile organization BISCOLAMPF prior to the formation of Jharkhand whose names were also indicated thereunder. According to them, no advertisement were issued before their engagement. All the workmen were being paid minimum wages as per government notification. Further they contended that the engagement is seasonal in character as work is not available for the whole year. Till 31.03.2008 the organization had sustained a loss of Rs. 5.14 Crores. Payment of wages for the whole year has entailed severe economic burden. They therefore, refuted the claim of workmen as unjustified and unlawful inter alia on the aforesaid grounds. Five workmen deposed during the proceedings of the reference case while management produced two witnesses. The learned Tribunal has referred to the issues in para-1 of the award and also discussed the stand of the respective parties as taken in their written statement. It has also dealt with the evidence of both the parties. However, while answering the award it has held as under :- But here the workman are not demanding absorption in the unit i.e., the

federation JHASCOLAMP but the real grievance is for equal work no equal wage are given. The Factory is acting under the guidance of the Board of Director. The policy of pick and choose is apparent from the evidence who has admitted that M.W. 2 who has admitted. The workmen have gained the quality of the skilled labour but even then they are getting the wages of unskilled labour though they at par with the other labourers who are getting scale of class IV employees. In the opinion of this court these workers who are called permanent in the payment register must get the wages of skilled workers. It is true that these workmen cannot claim the status of an employee of the Government claiming other benefits to a Government servant but at the same time it will be an unfortunate -3- affair that labour working since 1977 in an institution are getting unequal treatment by the management. Accordingly this court is of the opinion that the Board of directors must hold a meeting within two months from this award and formulate a policy to remove inequality and discontent of the workmen and pay the difference of the amount to them which they are claiming. They are demanding benefit of permanent employees given to permanent workers at par with them and some are junior to the concerned workmen who are parties in this reference. The Board shall also consider that the nine workmen who are senior to the workman engaged like Prabha Devi in JHASCOLAMP be also given opportunity to be declared as permanent workers and the facilities in like manner given to her. A close scrutiny of the operative portion of the award gives the impression that the learned Labour Court has not answered the reference posed before it. The reference was in clear terms inter alia:- (i) Whether the action of the management in not making the services of 09 adhoc employees permanent is justified or not? If not, to what relief they are entitled to. (ii) Whether payment of 34 workmen on daily wage basis is justified or not? If not, to what relief they are entitled to. Learned Labour Court has seriously erred in holding that the workmen are not demanding absorption in the unit and that the real grievance is for equal work as no equal wages are given. As reflected from the written statement of the workmen referred to hereinabove, they had specifically sought permanency in the establishment of the employer in respect of 09 such workmen from the date when they completed 240 days of engagement and in the case of other 34 workmen they also claimed the benefits of salary of 4 th grade employee since they were treated as permanent. The learned

Labour Court was required to render categorical findings one way or the other on the basis of the pleadings and material evidence on record. On the contrary, it has only expressed its opinion that the Board of Directors should hold a meeting to formulate a policy to remove inequality and discontent of the workmen and pay the difference of the amount to which they are claiming. No determination of the claim has been made as such. Even in respect of the claim towards permanence, it has only gone to observe that these 09 workmen who were senior to Prabha Devi in JHASCOLAMPF be also given -4- opportunity to be declared as permanent workers. This conclusion of the Labour Court was not in consonance with the question posed before it and the responsibility it had to discharge as judicial forum created under Industrial Disputes Act. The petitioner management has assailed the award on the grounds that they are vague and uncertain in nature failing to answer the reference in categorical terms. Even from the submission of the representative of the Union representing the workmen, it appears that they are reconciled to such a vague declaration after fighting the long drawn litigation for 7 - 8 years by now. In these circumstances, this Court does not consider it proper to substitute its own opinion that too in the absence of material evidence before it. The application of mind on that count has to be made by the learned Labour Court itself where the matter is remanded. The learned Labour Court would answer the aforesaid two questions posed under the reference on the basis of the pleadings and material evidence already on record before it within a period of six weeks from the date of receipt of a copy of this order after giving at least two opportunities to the workmen as well as the management to advance their submission on the instant issues. Accordingly, the impugned award dated 26.11.2011 passed in Reference Case No. 10 of 2009 is set aside. The matter is remanded to the learned Labour Court, Ranchi for fresh decision in the aforesaid terms. Writ petition stands allowed. I.A. No. 5462 of 2016 stands closed. (Aparesh Kumar Singh, J.) Shamim/ Srikant