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Subhash Gupta and ors. Vs. Payment of Wages Authority (Astt. Labour Commissioner),

Subhash Gupta and ors. Vs. Payment of Wages Authority (Astt. Labour Commissioner),

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Court : Allahabad

Decided On : Aug-04-2008

Reported in : [2008(119)FLR707]; (2009)IILLJ67All

Judge : Rakesh Tiwari, J.

Appellant : Subhash Gupta and ors.

Respondent : Payment of Wages Authority (Astt. Labour Commissioner), ;fifth Additional District Judge, ;poorvanch

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.

Sri Bashistht Narayan Yadav and 26 others claiming themselves to be the employees of M/s Purvanchal Sahkari Katai Mills Limited, Bahadurganj, Ghaziabad (hereinafter referred to as the Mills). They moved an application under Section 15 read with Section 16 of the Payment of Wages Act, 1936 (hereinafter referred to as the 1936 Act) The claim application was registered as P.W, Case

No. 159/1992. The petitioners in the aforesaid claim alleged illegal deduction of their salary amounting to Rs. 3,37,196.05 paise for the period of January, 1991 to January, 1992.

2. The claim of the workman was contested by the respondent Mills by filing written statement interalia that the applicants before the Prescribed Authority were not its employees, rather they were employees of Shri Chandra Dhar Pandey a contractor for execution of work of contract of the Mills only. It was further claimed by the employers that they were not responsible for the payment of wages of persons employed as the workmen were not employed in or in connection of any work of manufacture of the Mills or its goods.

3. Sri Chandra Dhar Pandey also filed his written statement interalia that the workmen who had filed an application under the Payment of Wages Act, 1936 were employed by the Mills and were his employee.

4. In rebuttal the workmen stated that as he did not have a licence under the Contract Labour Regulations Act, 1970 and therefore, they were entitled to be treated as the employees of the principal employer and for that reason the principal employer would be liable for the payment of wages of the workmen concerned.

5. The point which was canvassed before the Prescribed Authority appointed under the Payment of Wages Act, 1936 was that after the Contract Labour (Regulation and Abolition) Act, 1970 came into force under the provisions of the said Act it was necessary that the work performed through labour employed by contractors could be taken only if the Industrial establishment in which the labour was being employed was registered under Section 7 of the Act and it was incumbent upon the contractor to have a licence under Section 12 of the said Act.; and that the effect of non-registration of the principal employer is contained in Section 9 of the Act providing that if aforesaid conditions are not fulfilled the contract labour would be deemed to be employees of the principal employer.

6. The Prescribed Authority, respondent No. 2 rejected the claim of the workmen concerned vide order dated 31.12.1993 which has been appended as Annexure-6

to the writ petition. The relevant finding of the Appellate Court is as under:

15- Bsdk Je dkuwu 1970 dh /kkjk 29 ftuds vuqlkj izR;sd izFke fu;kstd vkSj izR;sd Bsdsnkj ls ,sls jftLVjksa vkSj vfHkys[kks dks j[ksxk ftlesa @ fu;ksftr Bsdk Jfedksa ds ckjs esa ,slh fof'kf'V;ksa muds }kjk fd;s x;s dke dh izd`fr mUgs nh x;h etnwjh dh njsa rFkk vU; ,slh fof'k'Vr;k ,sls iz:i esa j[kh tk;sxh tks fofnr dh tk; A ijUrq mDr foospuk ds vk/kkj ij bl dsl es ykxw gksuk ugh gks ikrk g SA vr% osru Hkqxrku jftLVj 1999&92 o gkftjh jftLVj 91&92 ds Li'Vhdj.k le{k vnkyr ekax fd;s tkus ds ckotwn is'k u fd;k tkuk oknhx.k@vihyk.V ds gd esa oSf/kd izhtei'ku mlds gd esa rc rd ugh dh tk ldrh fd tc rd oknhx.k@vihyk.V mDr fey esa fdl izdkj ls deZpkjh gks rFkk muesa mfYyf[kr osru nj :0 51&52 iSlk fdl vk/kkj ij fn;k tk ldrk fd fl) dj ns A

7. Aggrieved by the aforesaid order dated 31.12.1993 of the Prescribed Authority the workmen concerned filed an appeal under Section 17 of the Payment of Wages Act, 1936 before the District Judge, Ghazipur which was registered as Misc. Appeal No. 19 of 1994, Lalji and Ors. v. Poorvanchal Katai Mills Ltd. Bahadurganj, Ghazipur and Ors. The appeal of the workmen was heard by Additional District Judge, Vth, Ghazipur and is appended as Annexure-9 to the writ petition.

8. The contention of learned Counsel for the petitioners is that under the scheme of the 1970 Act, work with the help of labour engaged through contractors can not be taken unless the alleged contractor had a licence and the Industrial Establishment was itself registered under the said Act. It is submitted that it was the accepted that there was no dispute on the point that the alleged contractor did not have a licence under the 1970 Act but it was field that notwithstanding that the 27 workmen of the principal employer and the same can not be held to be responsible for the payment of wages of the claimants.

9. It is further submitted that since the contractor did not have a licence, hence the labour so engaged by him was to be treated as the employee of the principal employer i.e. the Industrial Establishment and in that circumstances it is the principal employer who will be responsible for the payment of wages of the claimants workmen whose wages had not been paid by the alleged contractor.

10. The next point urged by the learned Counsel for the petitioners was that the purpose of the 1970 Act was to abolish the Contract Labour and since it was social welfare legislature and it empowered the State Government to abolish Contract Labour and prescribed that various categories of work was to be taken only with the help of employees directly employed by the principal employer and not through contractor; and that any breach of the provisions contained in the 1970 Act, had the effect of converting the nature of employment through Contract Labour to that of employment by principal employer.

11. It is lastly urged that it has been specifically provided in Section 21 of the 1970 Act, that in case the contractor did not pay wages to the Contract Labour or the Contract Labour could not realize from the contractor it is the principal employer who was responsible for the payment of wages for the work done in the Industrial Establishment of the principal employer.

12. A perusal of the order of the Prescribed Authority as well as the Appellate Authority impugned in the writ petition show that the respondent Mill has taken a specific stand that the workmen were not its employees and that the workmen could not prove before the Prescribed authority appointed under the Payment of Wages Act, 1936 their status as employees of the Mills. It was contended by the employers that in the facts and circumstances of the case provisions of Section 21(4) of the Act are not applicable in the present case as there was no breach of the said section.

13. It appears that after considering the entire evidence on record and the statement of the witnesses the Prescribed Authority appointed under the Payment of Wages Act, 1936 came to the conclusion that the provisions of Contract Labour (Regulation and Abolition) Act, 1970 do not apply in the present case as the said contractor Sri Chandra Dhar Pandey was not a contractor in the respondent Mill during the disputed period. The Appellate Authority also has confined categorical finding arrived at by the Prescribed Authority that the workmen were not the employees of the Mills. The Appellate Authority relying upon the principle of law as laid down in 1992 LIC SC 75 has held that the Payment of Wages authority has rightly decided the controversy and there is no error of law much the less error

apparent on the face of record.

14. The Courts below also appears to have considered the contradictions between the statements of the witnesses of the workmen who have not been able to prove their case before the Prescribed Authority as well as Appellate authority. Both the Courts below have given concurrent findings of facts holding them not to be employees of the respondent Mill as the findings of the Courts below could not be assailed by the learned Counsel for the petitioners, this Court is of the opinion that the writ petition, in the facts and circumstances of the case, is liable to be dismissed.

15. The writ petition accordingly fails and is dismissed. No order as to costs.

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