2024 INSC 199

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4092-4093/2024
(ARISING OUT OF SLP (C) NO(S). 6370-6371/2024
(ARISING OUT OF SLP (C) DIARY NO. 32072 /2021)

MAHANADI COALFIELDS LTD. .... APPELLANT(S)

VERSUS

BRAJRAJNAGAR COAL MINES WORKERS' UNION ...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Delay condoned. Leave granted.

2. The Appellant, Mahanadi Coalfields Ltd., a subsidiary of Coal India Ltd. floated a tender for the transportation of crushed coal and selected a successful contractor for performance of the agreement for the period 1984 to 1994. The contractor employed workmen for execution of this contract.

3. The respondent-union espoused the cause of the workmen who were engaged by the contractor and sought permanent status for them. It relied on clauses 11.5.1 and 11.5.2 of the National Coal Wage Agreement-IV dated 27.07.1989. Under these clauses, it was agreed that the employer shall not engage contract labour with respect to jobs which are permanent and perennial in nature. They also provide that such jobs shall be executed through regular employees.

4. Following the representation of the respondent-union, the Assistant Labour Commissioner sent a notice to the appellant for conciliation. The conciliation process eventually culminated in a settlement dated 05.04.1997 under Rule 58 of the Industrial Disputes (Central) Rules, 1957. The relevant portion of the settlement is as follows:

> "*The Union has submitted a list of 32 persons said to have been engaged by the contractors and demanded for their regularisation. Alter verification, it was observed, that the following persons are engaged in Bunker for operating Chutes.*

SI No.	**Name of the Person**	**Father's Name**
01.	Sri Sadanand Bhoi	Keshab
02.	Sri Purusottam Dau	Govardhan
03.	Sri Anta Barik	Gadadhar
04.	Sri Aditya Nikhandia	Cheru
05.	Sri Bhabagrahi Pradhan	D. Pradhan

06.	Sri Sudarshan Khandit	Masru
07.	Sri Ashok Kumar Rout	Sitaram
08.	Sri Krishna Dau	Goverdhan
09,	Sri Abhimanyu Kisan	Chhala
10.	Sri Lakhan Bhoi	Keshab
11.	Sri Jay Narayan Bhoi	Chaitan
12.	Sri Sanatan Kisan	Ugresan
13.	Sri Giridhari Raudia	Goverdhan
14.	Sri Daitari Pradhan	Nira
15.	Sri Subram Bag	Buchhu
16.	Sri Madhu Marai	Dasa
17.	Sri Fakir Khamari	Kartik
18.	Sri Sanatan Naik	Ram Krishna
19.	Sri Sanatan Bhoi	Tiharu

Since this operation is of permanent and perennial nature, it was agreed to regularise the above 19 (nineteen) persons as General Mazdoor, Category-I, in the NCWA-V Pay Scale of Rs. 65.40-1.08-85.52.

In respect of other persons, it was contended, that they are engaged in purely casual nature of jobs, which are not prohibited under Contract Labour (R&A) Act, 1970, and accordingly, they are not eligible for regularisation."

5. In view of the fact that the settlement is confined to only 19 workmen, the Central Government referred the entire dispute to the Industrial Tribunal under Section 10 (2A)(1)(d) of the Industrial Disputes Act, 1947, on 20.05.1997 registered as Dispute Case no. 27/2001 before the Industrial Tribunal, Rourkela, Odisha. Before the Tribunal, the workmen examined

3 witnesses in support of their case and the management examined 4 witnesses.

6. By its judgment dated 23.05.2002, the Tribunal allowed the industrial dispute and directed the regularization of the remaining 13 workmen. The important findings of the Tribunal are as follows. At the outset, the Tribunal rejected the preliminary objection that it had no jurisdiction under the Contract Labour (Regulation and Abolition Act), 1970 and proceeded to consider the nature of the work that the 13 workmen were performing. Having considered the matter in detail, the Tribunal held that the work of removing spillages in the railway siding, below the bunker and operation of chutes (in the bunker) are regular and perennial in nature. Having considered the evidence of the management witnesses, the Tribunal concluded that the nature of the work is perennial. Accordingly, the remaining 13 workers were directed to be regularized in the following terms:

> *"The evidence is straight and clear that all the 32 persons were attending the same of. The rest 13 persons whose cases have not been regularized were attending the same job, which was being attended by 19 persons whose services has been regularized. So*

standing on the same footing the cases of the rest 13 persons should not have been ignored on the ground that, they did not deserve to be regularized as reflected in the settlement. In my opinion when 19 persons have been regularized the case of rest 13 persons who were attending the same type of work should have been regularized without any cause. The ground stated in the settlement that they do not deserve, in my opinion does not appears to be a genuine ground to discard the cases of the rest 13 persons. I am not inclined to burden the award by placing all the submissions made on behalf of the parties. It is necessary to refer the evidence of the Witness No. 2 examined on behalf of the 1st Party Management. As per clause 11.5.0 of N.C.W.A. IV the Contract Labourers cannot be engaged for permanent and perennial nature of job. He has further stated that, they had entered to a settlement regarding those 19 persons. His further evidence is that the persons out of 13 were also working in Coal Handling Plant, which is a permanent and perennial in nature. The evidence of the Witness No. 3 of the lst Party Management is that, the work of railway siding is also a regular and perennial in nature for which the 19 persons have been regularized. All the 32 persons were attending the job of removing spillages for railway Biding below the bunker and also the operation of the chutes in the bunker. So in view of such evidence it cannot be said that the rest 13 persons were not attending the job which were being attended by the 19 persons whose services has been regularized. So in my opinion, even if there has been a settlement between the parties regularizing 19 persons the rest of 13 persons has got cause of action to raise the Industrial separate and their case should not have been ignored. In the other words the action of the 1st Party Management in not regularizing the services of the rest 13 persons in accordance was N.C.W.A. IV is illegal and unjustified. Hence, this Issue is answered accordingly."

7. Questioning the legality and validity of the Tribunal's judgment, the appellant filed a Writ Petition (C) numbered 2002/2002 before the Orissa High Court.

8. The Division Bench of the High Court heard the matter, and by its judgment, impugned before us, dismissed the writ petition. The High Court referred to the nature of work performed by the workmen and affirmed the findings of the Tribunal based on the evidence of witnesses such as MW3, the personal manager in the appellant company. The High Court took note of his evidence that the work on railway sidings was regular and perennial in nature. He also admitted that it is with respect to that work for which the 19 workers were regularized. The High Court also observed that there was no evidence to dispute that all 32 workers were engaged in removing spillages from railway sidings and below the bunker, which is in addition to operating chutes. The High Court, therefore, upheld the view taken by the Tribunal. The Review Petition bearing No. 77/2017 filed by the management was also dismissed by the order dated 11.11.2021.

9. We have heard Mr. Aman Lekhi, learned Senior Counsel appearing on behalf of the appellant, assisted by Mr. Siddharth Jain, Mr. Soumyajit Pani and Ms. Aishwary Bajpai, Advocates and also Mr. Ashok Kumar Panda, learned Senior Counsel for the respondent-union, assisted by Mr. Tejaswi Kumar Pradhan, Mr. Mohan Prasad Gupta, Mr. Manoranjan Paikaray and Mr. Shashwat Panda, Advocates.

10. ***Submissions of the appellant:*** Before this court, the appellant company contends that the Award dated 23.05.2002 is bad in law. It argues that the settlement was binding on the parties due to Section 18(1) read with Section 36, Industrial Disputes Act and it continues to be so by virtue of Section 19(2) of the Act, since the settlement was never terminated.

10.1 The settlement was reached after verification of the nature of works performed. It was found that 19 workers were performing perennial and permanent work and the work of the remaining 13 workers was 'casual' in nature.

10.2 There was no provision to regularize such workers under the NCWA-IV. The only provision under which regularization could be claimed would be Section 25F of the Industrial Disputes

Act, but the said provision applies only to workers who worked under the direct supervision of the company for a certain period and wrongfully stopped thereafter. In the present case, as the workmen worked under the supervision of a contractor and not the appellant, Section 25F will have no application.

10.3 Lastly, it is contended that the Tribunal had wrongly directed the appellant to disburse backwages to the 13 workers. This is contrary to the settled principle that grant of backwages can never be automatic or a natural consequence of regularization. The workers seeking regularization and backwages have an onus to show that they are not gainfully employed. For this, the appellant relied on ***J.K. Synthetics Ltd. v. K.P. Agrawal & anr.*** **reported as (2007) 2 SCC 433** to support this contention.

11. ***Submissions of the respondent-union:*** The respondent-union submitted that all 32 workers were engaged in works of a similar nature. They assert that the list in the industrial reference dated 20.05.1997 shows that workers were arbitrarily deprived of regularization, wherein certain workers from the bunker and the plant were left out of the settlement without any

reason. It is also argued that the work in the railway siding was perennial and regular in nature, similar to the works in the bunker.

11.1 To support its contentions, the respondent-union relies on the evidence of MW3 and MW4, who were the personal manager and the project officer in the appellant company, respectively. While MW3 categorically admitted that the removal of spilled coal from the railway siding, the bunker and the Coal Handling Plant is regular and perennial in nature, MW4 stated that all 32 workers were engaged similarly. It is therefore submitted that their evidence proves that the 13 workers actively participated in tasks deemed regular and perennial.

11.2 Since there was no resolution of the claim of regularization of similarly placed workers, they have the right to pursue the remedy under the Industrial Disputes Act, 1947. It is submitted that Rule 58 of the Industrial Dispute (Central) Rules, 1957 under which the settlement occurred, nowhere poses a legal obstruction to the remedy.

11.3 It is finally submitted that the 13 workmen suffered for no fault of theirs and an order of regularization must naturally lead to grant of consequential backwages.

12. ***Analysis and findings:*** Having heard the parties in detail, we are of the opinion that the present appeals can be disposed of for the following reasons.

13. At the outset, the appellant objected to the Tribunal entertaining the industrial dispute passing of the award on the ground that a settlement under S. 18(1) read with S. 36 of the Industrial Disputes Act is binding on all the parties under S. 19(2) of the Act. This is the substantive part of the submission on behalf of the appellant. The facts of this case, as they unfold, leading to the arrival of the settlement, followed by the reference to the Industrial Tribunal, and then the award, are necessary for our consideration.

14. At the first place, all the 32 workmen commenced their work through the contractor from 1984 and continued till 1994. In 1994, the respondent-union espoused the cause of all the 32 workers and the Asst. Labour Commissioner took up the entire

cause. This culminated in the settlement dated 05.04.1997, relied upon by the appellant.

15. To appreciate the submission that the settlement is the last word and that the Tribunal could not have entertained the reference or passed the Award, the following facts become crucial.

16. The settlement itself talks about the claim of the 32 workers raised by the respondent-union. It then talks about the contention of the management that others are engaged in 'purely casual' nature of jobs. In the very next sentence, it agreed to regularize 19 contractors. It is important to note that, being conscious of the fact that the settlement provides for the regularization of 19 out of the 32 workmen, the Government invoked the power of reference to refer the matter to the Tribunal to adjudicate the interest of all the 32 workers. The Tribunal was naturally bound by the reference to consider the claim of all the 32 workers.

17. Despite the fact that there was a settlement with respect to some of the workmen, the Tribunal was tasked to examine the entire reference and give independent findings on the issue.

Thus, the Tribunal was justified in giving its award on the reference made by the central government. This answers the objection raised by the appellant about the jurisdiction of the Tribunal.

18. We are also conscious of the fact that the jurisdiction that we exercise is under Article 136 of the Constitution. The findings of fact arrived at by the Tribunal are unassailable. We are also of the opinion that the High Court has correctly rejected the writ petition filed against the award. Apart from the concurrent findings of fact, we see no substantial question of law in these appeals.

19. Even otherwise, the present case is not one where this court would exercise its discretion. What appeals to us is that the 32 workers who entered the service of the appellant in 1984, continued uninterruptedly till 1994, when the respondent-union sought their permanence. In the settlement arrived in 1997, the stand of the appellant with respect to the 13 workers is as follows:

> *"In respect of other persons, it was contended that they are engaged in purely casual nature of jobs which are not prohibited under Contract Labour (R&A) Act, 1970*

and accordingly, they are not eligible for regularisation."

20. It is proved that the remaining workers stand on the same footing as the regularized employees, and they were wrongly not made part of the settlement. This is established by the Tribunal, by examining the nature of work undertaken by the first set of 19 workmen and that of the other 13 workmen. It also examined Shri Arun Ch. Hota (WW3), the Deputy General Manager (MW2), Mr. Udayshankar Gonelal, the Personal Manager (MW3) and Shri S. Agarwal, the Project Officer (MW4). The Tribunal finally came to the conclusion that the nature of the duties performed by the 13 workmen are perennial in nature. The appellant has failed to establish any distinction between the two sets of workers. The Tribunal was, therefore, justified in answering the reference and returning the finding that they hold the same status as the regularized employees.

21. We are also not impressed with the artificial distinction which the appellant sought to bring about between the 19 workers who were regularized and the 13 workers who were left out. The evidence on record discloses that, of the total 32 workmen, 19

workers worked in the bunker, 6 worked in the Coal Handling Plant, and 7 worked on the railway siding. However, of the 19 workers who were regularized, 16 worked in the bunker, and 3 worked in the Coal Handling Plant. However, 3 workers from the same bunker, 3 workers from the same Coal Handling Plant and again 7 workers from the same railway siding were not regularized. A tabulated representation of the above description is as follows:

Site of work	**No. of workers who executed works**	**No. of workers who were regularized**	**No. of workers not regularized**
Bunker	19	16	3
Coal Handling Plant	6	3	3
Railway Siding	7	-	7
Total:	**32**	**19**	**13**

22. The above-referred facts speak for themselves, and that is the reason why the Tribunal has come to a conclusion that the denial of regularization of the 13 workmen is wholly unjustified. As stated previously, we do not find any grounds in the artificial distinction asserted by the appellant. However, as the case was argued at length we thought it appropriate to give reasons for

rejecting the appeals. What we have referred to hereinabove are all findings of fact by the Tribunal as affirmed by the High Court. In view of the concurrent findings of fact on the issue of nature of work, the continuing nature of work, continuous working of the workmen, we are of the opinion that there is no merit in the appeals filed by the appellant.

23. This is a case of wrongful denial of employment and regularization, for no fault of the workmen and therefore, there will be no order restricting their wages.

24. With respect to payment of backwages, we are of the opinion that the workmen will be entitled to backwages as observed by the Industrial Tribunal. However, taking into account, the long-drawn litigation affecting the workmen as well as the appellant in equal measure and taking into account the public interest, we confine the backwages to be calculated from the decision of the Tribunal dated 23.05.2002. This is the only modification in the order of the Tribunal, and as was affirmed by the judgment of the High Court.

25. For the reasons stated above, the appeals arising out of the final judgment and order of the High Court in W.P. (C) No.

2002/2002 and order in Review Petition No. 77/2017 are dismissed with the direction that the concerned workmen shall be entitled to backwages with effect from 23.05.2002. There shall be no order as to costs.

.....**J.**
[Pamidighantam Sri Narasimha]

.....**J.**
[Sandeep Mehta]

New Delhi.
March 12, 2024.