

## **JUDGMENT & ORDER**

**/Sandeep Mehta, CJI**

The instant intra-Court writ appeal is directed against the judgment and final order dated 11.12.2018, passed by the learned Single Bench dismissing WP(C) No.3669/2014, preferred by the appellants herein.

**2.** By the aforesaid writ petition, the petitioners had challenged the award dated 03.06.2014, passed by the Labour Court, Guwahati in Reference Case No.7/2009. By the said award, the reference made by the Government vide Notification dated 26.05.2009, was answered in favour of the respondents, being the Management of the Bongaigaon Thermal Power Station (an undertaking of the Assam State Electricity Board) against the appellants, workmen.

**3.** Brief facts relevant and essential for disposal of the writ appeal are noted hereinbelow.

The appellants herein claim to be Muster Roll workers engaged by the respondent Corporation. Claiming that they had been unlawfully terminated, the appellants/writ petitioners preferred writ petition, being WP(C) No.4855/2006 in this Court. The said writ petition was dismissed by learned Single Judge of this Court, vide order dated 03.03.2009, giving liberty to the appellants to approach the Industrial Tribunal for ventilating their grievances.

Pursuant to the said order, Reference Case No.7/2009 was instituted before the Labour Court. The then employer ASEB (subsequently re-designated as Assam Power Development Corporation Limited) challenged the proceedings of the Reference

Case No.7/2009 on the ground of *res-judicata* by filing the writ petition, WP(C) No.4620/2009.

The learned Single Judge of this Court, vide order dated 19.05.2010, remanded the matter to the Industrial Tribunal for deciding the preliminary issue of *res-judicata* raised by the ASEB/APDCL.

The Labour Court decided the preliminary issue in favour of the ASEB/APDCL and issued the award dated 05.09.2010 rejecting the claim of the appellants.

The Appellants instituted writ petition, WP(C) No.6308/2010 for assailing the award dated 05.09.2010 whereby, the preliminary issue was decided against the appellants.

The aforesaid writ petition, WP(C) No.6308/2010 came to be allowed vide order dated 31.10.2013 and the award dated 05.09.2010 was quashed and set aside and the reference was remanded to the Labour Court.

Post Remand, the Labour Court conducted fresh proceedings and rejected the claim of the appellants regarding wrongful termination vide award dated 03.06.2014.

**4.** The appellants challenged the final award dated 03.06.2014, by preferring the captioned writ petition, WP(C) No.3669/2014, which stands rejected vide judgment and final order dated 11.12.2018, whereby the award dated 03.06.2014 passed by Labour Court has been affirmed.

**5.** The appellants herein have preferred the instant writ appeal for assailing the judgment and final order, dated 11.12.2018 rendered by the learned Single Bench as well as the award of the Labour Court.

**6.** Learned counsel Mr. S. Borthakur, Mr. D.C. Nath and Mr. P.H. Konwar, representing the appellants herein, vehemently and fervently contended that the appellants were appointed as workmen in the Bongaigaon Thermal Power Station (hereinafter referred to as the BTPS) at Salakati between the years 1981 and 1986. They continued to serve the BTPS till termination of their services in the year 2002 on the purported ground that the BTPS had stopped generating power.

**7.** Mr. Borthakur urged that the appellants set up a pertinent case before the Labour Court that they had been directly engaged by the BTPS Management/ Authority by assigning them special duties/tasks allotted at different times. The appellants further set up a specific case that they used to sign the attendance register along with the regular employees and were also given the benefit of Provident Fund (PF), Gratuity and accommodation by the BTPS Authority. After their initial appointment directly under the BTPS, the appellants were informed that their salaries, after making statutory deduction, would be paid through agents and they were issued identity cards. The appellants thus realized that their status had been unilaterally changed as contract labours.

**8.** Mr. Borthakur urged that the entire case set up by the employer BTPS before the Labour Court that the appellants herein were employed as contract labourers, is absolutely an eye-wash and far from truth. He drew the Court's attention to the affidavit of the Management Witness (MW) No.1, Shri Prokash Dutta and the averments made in para No.13 thereof, wherein it was sworn that the management of BTPS had committed no illegality in terminating their services after expiry of the specific terms of the existing contracts.

**9.** Mr. Borthakur urged that in cross-examination, the witness (MW-1) was confronted with the facts of reference case No.2/2003 wherein, 36 similarly placed workers were directed to be reinstated. He further urged that in the written statement of the employer, at para No.5, it was specifically mentioned that attendance of the contract labourers was taken and the wages were paid after deducting the PF contribution and gratuity, as per law. He pointed out that contrary to the pleadings, the Management Witness Prokash Dutta stated that the establishment was not paying gratuity and CPF etc.

**10.** Mr. Borthakur referred to the evidence of the Management Witness Madam Mohan Brahma (MW-2), who swore in his affidavit that the contractor, A.G. Khan employed the workers who had approached the Labour Court. Supply order dated 31.11.1997 was issued in this regard.

Mr. Borthakur urged that this assertion in the affidavit of the Management Witness fortifies the case of the appellants that their status was unilaterally and *malafide* changed as contract labours whereas the appellants made specific assertion that they were directly engaged by the BTPS establishment between the years 1984 to 1987.

Mr. Borthakur further referred to the statement of Management Witnesses, Sarbeswar Dimary (MW-3), who stated that he had supplied two labourers, namely, Nripen Barman and Ramesh Nath to the BTPS.

Attention of the Court was drawn to the cross-examination conducted from the said witness, wherein he admitted that earlier these labourers were supplied by Abdus Salam and that their wages were given by the BTPS authority. The witness also failed to produce his licence as a contract labour supplier. Mr. Borthakur referred to the

statement of Dilip Ch. Brahma Narzary (MW-4), who stated in his examination in chief that he had no licence for supplying labourers. However, on receiving a letter from the BTPS, he had supplied a labour namely, Simbu Barman. The witness stated that sometimes the BTPS made payment directly to the labourers. In cross-examination, the witness (MW-4), admitted that the wages of the labourers were paid by the BTPS authority.

Mr. Barthakur also referred to the statement of Sri Rup Nath Boro (MW-5), who stated that he was not a contractor and had never supplied labourers to BTPS, Salakati.

Deposition of A.G. Khan (MW-6) was referred to and it was submitted that the witness claimed to have supplied labourers Dhruba Nath, Purna Nath, Hari Charan Roy and Umesh Kalita to the BTPS establishment but he could not produce any work order or other documents relating to supply of labourers. The witness admitted that the wages of the labourers were paid by the BTPS authority.

**11.** Mr. Borthakur submitted that the Labour Court as well as the learned Single Judge erred in shifting the burden of producing documents of engagement upon the appellants being the labourers. However, a different yardstick was applied while appreciating the case of the BTPS. He submitted that the fact that the employer establishment admitted that the labourers, were being paid gratuity and their PF also being deducted from their salary payments, makes it clear that they were directly engaged by the Company.

**12.** Mr. Borthakur referred to the observations made at para No.27 of the impugned order passed by the learned Single Judge,

wherein it has been held that the workmen did not prove a single document :

*“27. In the instant case, it is seen that the workmen did not prove a single document. As regards the foundation of the case that they were appointed by the management by issuing appointment letters, even accepting the plea that such appointment letters were recalled, it is failed to be understood as to what prevented the workmen to produce at least one such appointment letters. Issue of I.D. Cards may be for many other reason and cannot be a conclusive evidence of the petitioners being under direct employment of the management. No documents in original were produced before the Labour Court.”*

**13.** Mr. Borthakur urged that this finding is patently erroneous because in the statements of the Workman Witnesses (WW), Nripen Barman (WW-1), Lokendra Ch. Boro (WW-2), Pabitra Kumar Rabha (WW-3), Dhruba Kumar Nath (WW-4), Sunil Basumatary (WW-5), Khargeswar Narzary (WW-6), the certificates issued by the Executive Engineer, Mill & Milling Circuit Maint. Division in respect of WW-1; Electric Maintenance Division in respect of WW-2 and 6; Handling & Operation Division in respect of WW-3; Fuel Handling Maintenance Division in respect of WW-4 and WW-5 were annexed, wherein it has been certified that these labourers were working as Skilled Labourers on Muster Roll since the dates mentioned in the certificates.

Mr. Borthakur urged that the genuineness of these certificates annexed in the evidence of the Workman Witnesses was not disputed by the employer either in the written statement or in the evidence of its witnesses and thus, it is clearly a case, wherein the learned Single Judge, misread the record and omitted to account for documents on record while deciding the writ petition. He submitted that the same mistake was committed by the learned Industrial Tribunal and hence, it is a fit case, wherein the impugned orders

should be quashed and the matter should be remanded to the Labour Court for fresh decision as per law.

**14.** Per contra, Mr. D. Nath, learned Senior Government Advocate, Assam and Mr. B. Choudhury, learned Standing Counsel, APDCL, vehemently and fervently opposed the submissions advanced by the appellants' counsel. They contended that since the reference was made at the instance of the appellants herein, the burden of proof was upon the appellants to establish their case by leading convincing oral and documentary evidence that they were in direct engagement of the respondent establishment.

**15.** Mr. D. Nath urged that the supply orders issued to the contractors for supply of labourers, the bills raised by the contractors, the payment vouchers, the statement of labour attendance prepared by the contractors were proved in the Reference Case by MW-2. These averments and documents were not controverted by the appellants.

**16.** As per Mr. Nath and Mr. Choudhury, since the appellants herein were never the employees of the BTPS establishment, there was no requirement of following the mandates of Industrial Disputes Act, 1947 for discharging their services. As a matter of fact, the employer had simply discontinued the orders for supply of labourers given to the contractors. They submitted that as there was no employer-employee relationship, the appellants failed to make a case for interference and the reference was rightly decided against them.

On these submissions, they implored the Court to dismiss the writ appeal and affirm the decision of the learned Single Judge and the award of the Labour Court.

**17.** We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material placed on record and the impugned orders.

**18.** At the outset, we may note that the learned Single Judge, recorded the contradictory finding (reproduced supra) at para No.27 of the impugned order, while dismissing the writ petition wherein it was held that the appellants/employees did not present any document to prove their case.

**19.** However, the fact remains that certificates of engagement by the establishment were produced in the evidence of the statements of the witnesses referred to by Mr. Borthakur, learned counsel representing the appellants.

**20.** Law is well settled that proceedings before a Labour Court are not governed by strict rules of Evidence. Hence, producing the original documents in support of the labour claims, was not required by any stretch of imagination. The Management was also allowed to produce the photostat copies of certain labour procurement orders given to the contractors. As the rules of appreciation are to be applied equally to both the sides, these documents, being photostat copies, could not have been relied upon. Furthermore, the fact remains that the contractors concerned, who were examined as MW-3, MW-4, MW-5, MW-6 and MW-7, were not made to verify and prove the supply orders, whereby the BTPS purportedly directed them to provide labourers.

Hence, it is clearly a case, wherein relevant material/ documents were omitted from consideration both by the learned

Single Judge as well as the learned Labour Court. We feel that if the documents presented by the workmen in their evidence had been taken in to account, a different view was possible.

**21.** In the backdrop of above discussion, the impugned orders do not stand to scrutiny and are hereby set aside.

The matter is remanded to the Labour Court, Guwahati, who shall re-hear the arguments of the parties and thereafter, decide the Reference Case No.7/2009 afresh as per law by a reasoned judgment.

**22.** The parties shall remain present through their counsel before the Labour Court, Guwahati on 16.11.2023 whereafter, the matter shall be proceeded as per law.

The writ appeal is allowed accordingly.

No order as to cost.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**