

A HINDUSTAN PAPER CORPORATION LTD.

v.

KAGAJKAL THIKADAR SRAMIK UNION & ORS.

DECEMBER 14, 2007

B [DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Labour laws:

C *Contract Labour (Regulation and Abolition) Assam Rules, 1971*
—r. 25(2)(v)(a), proviso—*Contract labourer claiming wages similar to*
regular labourer—*Assistant Labour Commissioner after examining*
nature of job submitted report—*Labour commissioner after examining*
said report passed interim order allowing existing condition of wages
D and other facilities to continue till further evaluation—*Single judge*
of High Court dismissed writ petition—*On writ appeal, Division Bench*
directed employer-Mill to give equal pay and other benefits to contract
labourer as that of regular employees—*Correctness of—Held: Division*
Bench ought not to have ventured roving enquiry—*Proper course was*
E to direct authority concerned to decide the issue.

The respondent-union filed a representation on behalf of contract labourers before the Labour Court for implementation of Rule 25(2)(v)(a) of Contract Labour (Regulation and Abolition) Assam Rules, 1971. The Mill did not submit its comments on the said representation. Thereafter the Labour Officer, by his letter dated 9.9.1993 forwarded all the materials to the Labour Commissioner for final decision. On receipt of the same, the Labour Commissioner directed the Assistant Labour Commissioner, Silchar to determine the nature of work in the finishing house of the Mill by regular workers and contract labourers. Pursuant to the same, the Assistant Labour Commissioner visited the Mill and after examining the nature of the job performed by the contract labourers and regular employees, forwarded its report. The Labour Commissioner, after examining the said report passed an interim order, allowing the

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existing condition of wages and other facilities to continue till further evaluation. A

The respondent-union filed writ petition which was dismissed by Single Judge of High Court. On appeal, the Division Bench allowed the representation of the Trade Union on merits and directed the appellant-Mill to give equal pay and other benefits to the contract labourers as that of regular employees. Hence the present appeal. B

Allowing the appeal, the Court

HELD: The Division Bench of High Court stepped into the shoes of the Labour Commissioner, perused the materials from the records and arrived at a final conclusion on merits and directed the appellant Mill to provide all the benefits to the contract labourers on par with regular workers as if it is the appropriate authority. The Division Bench ought not to have ventured roving inquiry and decided the issue leaving the appropriate authority in a lurch. The proper course is to direct the authority concerned to decide the issue expeditiously after affording opportunity to both parties. Though, the Single Judge has rightly disposed of the writ petition and in view of the fact that the matter has been ceased by the Labour Commissioner, the Division Bench committed an error in deciding the same on merits and issuing positive direction to the Mill as if it is a proper authority. It is settled position that before sorting out the controversy, the authority is free to take interim arrangement pending final decision and in such matters it is not desirable for the courts to interfere and take a decision as if there is no competent authority for the same. The question whether the work done by contract labour is the same or similar work as that done by the workmen directly employed by the principal employer of any establishment is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25 (ii)(v)(a). C D E F G

[Para 5] [778-C-H; 779-A-D-E]

BHEL Workers Association, Hardwar and Ors. v. Union of India and Ors., [1985] 1 SCC 630, relied on.

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From the final Judgment and Order dated 1.8.2000 of the Gauhati High Court in Writ Appeal No. 195 of 1996.

B Shruti Choudhary and Swati Sinha (for Fox Mandal & Co) for the Appellant.

D.K. Agarwal, Sudhir Kumar Gupta, S.K. Singla, Anurag Pandey, Mihir Kr. Chaudhary and S.C. Patel for the Respondents.

The Judgment of the Court was delivered by

C **P. SATHASIVAM, J.** 1. This appeal is directed against the final judgment and order dated 01.08.2000 passed by the Division Bench of the Gauhati High Court in Writ Appeal No. 195 of 1996 whereby the High Court allowed the writ appeal, *inter alia*, directing the appellant to pay equal and similar wages and other benefits to the contract labourers who work in the finishing job under Rule 25 (2) (v) of the Contract Labour (Regulation and Abolition) Assam Rules, 1971 (hereinafter called the "Rules").

2. Brief facts in a nut shell are as follows:

E The contesting 1st respondent herein is a registered Trade Union having its registered office at Panchgram District Hailakandi, Assam on behalf of 34 contract labourers hired by a contractor for the appellant-Hindustan Paper Corporation Ltd. (Cachar Paper Mill) (in short the "Mill") filed a representation before the Labour Officer/Inspector of F Assam, Hailakandi through its president for implementation of Rule 25 (2) (v) (a) of the Rules vide their letter dated 13.01.1992. The Labour Officer and Inspector on the basis of the said representation called for an explanation/reply from the said Mill. Since there was no response, the Labour Officer sent another letter dated 17.09.1992 and requested the G Mill to submit its comments on the said representation. In the absence of any comments, the Labour Officer proposed to hold an inquiry on 11.03.1993 and the same was communicated to the Mill. Again the date of enquiry was fixed to 29.04.1993. The Labour Officer conducted the H inquiry and forwarded a letter to the Mill on 04.06.1993. On receipt of the copy of the said inquiry report, a reply was sent by the Mill to the

Labour Officer contending that the contract labour and the regular labour are on two different footings and there is a reasonable classification between them. The Labour Officer, in his letter dated 02.07.1993 forwarded the reply of the Mill to the Trade Union thereby seeking comments on the said letter. Thereafter, the Labour Officer, by his letter dated 09.09.1993 forwarded all the materials to the Labour Commissioner, Assam for final decision. On receipt of the same, the Labour Commissioner directed the Assistant Labour Commissioner, Silchar to determine the nature of work in the finishing house of the Mill at Panchgram by regular workers and contract labourers. Pursuant to the same, the Assistant Labour Commissioner visited the Mill and after examining the nature of the job being performed by the contract labourers and regular employees forwarded his report by letter dated 25.07.1994. The Labour Commissioner, after examining the report submitted by the Assistant Labour Commissioner, Silchar passed an interim order dated 03.02.1995, thereby allowing the existing condition of wages and other facilities to continue till further evaluation and a final settlement is arrived in regard thereto. Aggrieved by the said order, the Trade Union filed Civil Rule No. 1359 of 1995 before the Single Judge in the Gauhati High Court. The learned Single Judge, by his order dated 13.02.1996, dismissed the said writ petition. The Trade Union filed a Writ Appeal No. 195 of 1996 before the Division Bench. By order dated 01.08.2000, while examining the validity of the interim order passed by the Labour Commissioner, the Division Bench allowed the representation of the Trade Union on merits and directed the appellant-Mill to give equal pay and other benefits to the contract labourers as that of regular employees. Questioning the said order, the Mill has filed the above appeal.

3. Heard Ms. Shruti Choudhary, learned counsel appearing for the appellant-Mill and Mr. D.K. Agarwal, learned senior counsel appearing for the first respondent-Trade Union.

4. The only point for consideration in this appeal is whether the order of the Division Bench is justifiable when the Labour Commissioner passed an order as an interim arrangement for continuing the existing conditions of wages and other facilities till final settlement is arrived at?

5. It is seen from the materials placed that on the basis of the representation received from the Union for payment of equal wages on

A par with regular employees, the Labour Commissioner, Gauhati instructed the Assistant Labour Commissioner to submit a report after personal verification. Till final decision being taken on the basis of the report and other materials as an interim arrangement, the Labour Commissioner directed that the “existing conditions of wages and other facilities continue till on circumspection and further evaluation a final settlement is arrived at in this regard later”. The above direction makes it clear that it is only an interim arrangement till final decision being taken. When this was challenged by the Union before the learned Single Judge, the learned Judge based on earlier decisions of this Court and finding that the question whether the works done by the contract labourers is the same or similar as done by the workmen directly employed is a matter to be decided by the Labour Commissioner rightly dismissed the writ petition filed by the Union. However, the Division Bench after knowing of the factual position including the fact that Labour Commissioner has called for a report and the issue is under consideration, stepped into the shoes of the said authority (Labour Commissioner) perused the materials from the records including the report of the Assistant Labour Commissioner, Silchar and arrived at a final conclusion on merits and directed the appellant-Mill to provide all the benefits to the contract labourers on par with regular workers as if it is the appropriate authority. It is made clear that we are not under estimating the claim/entitlement of the contract labourers. The point is that when the competent authority, i.e., Labour Commissioner, ceased the matter, instructed his subordinate to inspect the mill and submit a report with regard to the actual state of affairs between the contract labourers and the regular employees of the Mill, we are of the view that the Division Bench ought not to have ventured roving inquiry and decide the issue leaving the appropriate authority in a lurch. The proper course as held by this Court on several occasions is to direct the authority concerned to decide the issue expeditiously after affording opportunity to both parties. Though, the learned Single Judge has rightly disposed of the writ petition and in view of the fact that the matter has been ceased by the Labour Commissioner, the Division Bench committed an error in deciding the same on merits and issuing positive direction to the Mill as if it is a proper authority. It is settled position that before sorting out the controversy, the authority is free to take interim arrangement pending final decision and in such matters it is not desirable for the courts to interfere and take a

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decision as if there is no competent authority for the same.

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6. It is worth while to refer to the decision of this Court in *BHEL Workers Association, Hardwar and Ors. v. Union of India and Ors.*, [1985] 1 SCC 630 which is identical to the issue before us. The following conclusion in para 6 are relevant:

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“... .. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central). It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under Section 10 of the Act. Similarly the question whether the work done by contract labour is the same or similar work as that done by the workmen directly employed by the principal employer of any establishment is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25 (ii)(v)(a).”

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We are in respectful agreement with the said decision.

6. We are satisfied that the Division Bench was not justified in passing the impugned order and the same deserves to be set aside, accordingly we do so. However, we direct the Labour Commissioner to decide the issue raised by the Union by way of representation *de hors* to the observation made by the Division Bench and pass an order within a period of three months from the date of receipt of copy of this judgment after affording opportunity to both parties. It is made clear that we have not expressed anything on the merits of the claim of both the parties.

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7. In the light of the above discussion, the civil appeal is allowed. No costs.

D.G.

Appeal allowed.

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