CASE NO.:
Appeal (civil) 6348 of 2005

PETITIONER:
Bharat Heavy Electricals Ltd

RESPONDENT:
Anil and Ors

DATE OF JUDGMENT: 07/11/2006

BENCH:
Arijit Pasayat & S. H. Kapadia

JUDGMENT:

J U D G M E N T

KAPADIA, J.

What was the subject of the dispute decided by the Labour Court vide its Award dated 5.7.1996 in ADJ case No. 31/90 to 44/90 ? This is the question which we are required to answer in this civil appeal.

The facts giving rise to the civil appeal are as follows:

Bharat Heavy Electricals Limited ("BHEL") is the company registered under the Companies Act, 1956 having its registered office at New Delhi. Respondents 1 to 14 herein moved the Conciliation Officer under Section 2-A of the Uttar Pradesh Industrial Disputes Act, 1947 ("the said 1947 Act") stating, that there was a principal employer; that K.P. Singh was a contractor under whom they were working as contract labour; that the services were unlawfully terminated w.e.f. 1.12.1988, and accordingly, the contractor should be asked to take them back in service with full back wages w.e.f. 1.12.1988.

On 19.7.1989 BHEL filed its reply before the Conciliation Officer inter alia stating that, respondents 1 to 14 herein were engaged by the contractor; that the contractor was engaged by BHEL; and, that there was no employer-employee relationship between BHEL on one hand and the said respondents on the other hand.

Ultimately, the matter was referred to the Labour Court by way of a reference under Section 4-K of the said 1947 Act. Before the Labour Court BHEL contended, that respondents 1 to 14 were malis (gardeners); that they were engaged by the contractor; that these malis were required to clean parks; that in the vast area of land owned by BHEL, they were required to keep the campus neat ant clean; that they had worked for a brief period 1.6.1988 to 24.10.1988; and, that they were casual workmen, who were not entitled to be given work on all the days and, therefore, there was no industrial dispute between BHEL and the said respondents within the meaning of Section 2-A of the said 1947 Act. By the written statement, BHEL further contended, that respondents 1 to 14 were never paid wages by BHEL; that they never worked under their supervision and control, and that the rights, if any, of the said respondents were only against their contractor. BHEL further contended that the period of contract commenced on 1.6.1988 and ended on 24.10.1988.

At this stage, we quote hereinbelow the terms of reference made to the Labour Court:

"Whether termination of services of Anil son of Shri Vikram Singh by his employers from 1.12.88 was justified and/ or lawful ? If not then the

benefit/ relief the worker concerned is entitled to
\005."

By award dated 5.7.1996 the Labour Court held, that respondents 1 to 14 herein had worked for more than 240 days as malis; that work was taken from them by the contractors; and, that the services stood terminated from 1.12.1988 without complying with the provisions of Section 6-N of the said 1947 Act. In the said award, the Labour Court observed that, the workers themselves have proceeded on the footing that they were engaged by the contractors, but the work which they performed was for BHEL. The Labour Court came to the conclusion that non-employment of workers w.e.f. 1.12.1988 constituted termination under Section 2-A of the said 1947 Act. The Labour Court held that, BHEL had retained its control over the workers and, therefore, respondents 1 to 14 cannot be said to be the workers only of the contractor. Consequently, the Labour Court held that, BHEL was the principal employer and the contractor was the immediate employer. It further opined that, respondents 1 to 14 had worked for 240 days and that their services were wrongly terminated in breach of Section 6-N of the said 1947 Act. In the circumstances, the Labour Court held that the termination of services of respondents 1 to 14 by the contractor was not justified and lawful and that BHEL also was liable for wrongful termination. Accordingly, the Labour Court directed BHEL to re-employ respondents 1 to 14 in their services or get them employed under the contractor.

The said award was challenged by BHEL in the High Court by way of writ petition. By judgment and order dated 17.2.1999, the High Court upheld the award of the Labour Court saying that it did not suffer from any illegality or irregularity. The High Court affirmed the finding of the Labour Court that respondents 1 to 14 had worked under the control of BHEL and that BHEL was the principal employer of these workmen.

Aggrieved by the decision, BHEL carried the matter by way of special leave petition to this Court. By judgment dated 21.7.2003 the Division Bench of this Court held, that the services of these workmen were wrongfully terminated, that they had worked for more than 240 days in twelve calendar months. This Court further held, that control was retained by BHEL; that respondents 1 to 14 had to work under the supervision of BHEL and, in the circumstances, this Court refused to interfere with the award of the Labour Court.

We need not go into the chequered litigation regarding execution of the award which took place after the judgment of this Court. Suffice it to state that, after the judgment of this Court dated 21.7.2003, the Assistant Labour Commissioner ("ALC") passed an order on 1.12.2003 directing BHEL to re-engage respondents 1 to 14 through the contractors in compliance with award dated 5.7.1996.

Aggrieved by the order of the ALC, respondents 1 to 14 herein moved the Uttranchal High Court vide Writ Petition No. 1279/03 stating that the order of ALC be quashed and that BHEL should be directed to give employment to respondents 1 to 14 herein and not through intermediary, namely, the contractor.

By the impugned judgment dated 27.9.2004, after stating the above facts, the High Court set aside the order of the ALC dated 1.12.2003 and directed BHEL to reinstate respondents 1 to 14 herein in service directly. Hence, this civil appeal.
Shri Sudhir Chandra, learned senior counsel appearing for BHEL, contended that the doctrine of merger has limited application to the facts of the present case. He submitted that, when the Division Bench of this Court upheld the award vide its judgment dated 21.7.2003, this Court had confirmed the operative part of the award of the Labour Court which directed BHEL to re-employ respondents 1 to 14 in their service or get the said workers employed through an intermediary, namely, the contractor. He submitted that the doctrine of merger applies to the operative part of the

award and not to the reasoning or observations in the award. In this connection, learned senior counsel submitted that, an individual dispute was raised by the workers under Section 2-A of the said 1947 Act complaining about termination of services w.e.f. 1.12.1988. Learned senior counsel further pointed out that, before the Labour Court it was the case of the workers themselves that they were engaged by the contractor but the work which they had performed was for BHEL. In this connection, reliance was placed on the observations made by the Labour Court in its award (see page 76 of the SLP paper book). He submitted that, in the above circumstances, the Labour Court had treated BHEL as the principal employer and the contractor as an immediate employer. He submitted that, operative part of the order has become final by reason of the judgment of this Court dated 21.7.2003. He urged, that the award was given on the basis of an individual dispute under Section 2-A of the said 1947 Act; that the terms of the reference indicate that the only question which the Labour Court was required to decide was whether termination of services was justified and lawful and, if not, the benefits/ relief which each of the workers were entitled to. Learned senior counsel submitted that the workers in the present case cannot claim direct employment from BHEL. He urged that the Labour Court while granting reinstatement made an enabling provision by which the said workers (respondents 1 to 14) were directed to be re-employed by BHEL in the service directly or get them employed under their contractor. It is not in dispute that BHEL has got said workers employed through that contractor. The said workers continue to be the employees of the contractor even today. Even today, they are getting the work and salary from the contractor.

Learned senior counsel for the appellant further submitted that, the subject of the dispute before the Labour Court was the validity of the termination and not direct employment from BHEL. He submitted that, if the said workers were to ask for direct employment from BHEL, they were required to raise a regular industrial dispute not under Section 2-A but under Section 2(l) of the said 1947 Act. He submitted that the cause of the said workmen herein was not espoused by any union. If the workmen wanted direct employment from BHEL or regularization, they were required to raise a substantial industrial dispute before the tribunal; they were required to join the regular union of BHEL as party respondent and in such an event the matter was required to be adjudicated upon not by the Labour Court but by the tribunal. He further pointed out, that there is a regular union in the industry; that the company was maintaining a waiting list of workers of BHEL, who were required to be made permanent; that respondents 1 to 14 were never recruited directly by BHEL; that they had never applied for employment against vacancies in BHEL, and if they had sought direct employment with BHEL, then they were required to raise an industrial dispute seeking abolition of contract labour after making the regular union a party respondent. He, therefore, submitted that an individual dispute, though need to be an industrial dispute under Section 2-A, cannot be converted into an industrial dispute under Section 2(l) without a proper reference.

Shri V.C. Mishra, learned senior counsel appearing on behalf of some of the respondents, submitted that in the earlier round of litigation, the Labour Court, the High Court and the apex Court had held that respondents 1 to 14 were the employees of BHEL. He urged that, vide para 13 of the decision of the apex Court, the findings recorded by the Labour Court and the High Court were confirmed and that respondents 1 to 14 were directed to be treated as employees of BHEL. In the circumstances, learned senior counsel urged that the doctrine of merger was squarely applicable and, therefore, the ALC had erred in directing BHEL to re-employ respondents 1 to 14 through the contractor. Learned senior counsel urged that, in the circumstances, there was no reason to interfere with the impugned judgment of the High Court directing BHEL to re-employ respondents 1 to 14 directly as their workers.

Ms. Asha Jain Madan, learned counsel appearing for some of the respondents, contended that in the earlier round of litigation respondents 1 to

14 had succeeded in all the courts. She heavily relied upon the observations made in the judgment of the High Court confirmed by this Court stating that, BHEL had resorted to a camouflage in order to avoid the provisions of the said 1947 Act. She contended, that respondents 1 to 14 were malis, they were required to look after the lawns of the company; that in the earlier round, even after the award the company had refused to pay compensation to the workers either directly or through the contractor; that the contractor had disowned their liability; and, in the circumstances, the workers had to file an application for implementation of the award. She contended that the workmen who get out of job unless and, in the circumstances, it was submitted that this Court should not interfere with the impugned judgment. She further contended that engagement of workers through a camouflage, keeping control over their work, termination of services unlawfully and refusal to produce relevant records before the Labour Court are circumstances which show that BHEL was the employer and respondents 1 to 14 were entitled to be directly employed with the company. Learned counsel further contended that, the very basis of the award in the present case was unlawful termination of services by BHEL through its contractor. She submitted that the judgments of the High Court and this Court upholding the award show that BHEL was the real employer and a camouflage was created by BHEL to show that respondents 1 to 14 were the employees of the contractor and not of the BHEL. In the circumstances, learned counsel contended that respondents 1 to 14 should be employed by BHEL as their employees. In this connection, learned counsel relied upon the order passed by this Court in the case of Hotel Corporation of India & anr. v. Balwant Rai Saluja & Ors. . Learned counsel also relied upon the judgment of this Court, referred above, in the case of Bharat Heavey Electricals Ltd. v. State of U.P. and Ors. as also the judgment of this Court in the case of Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors. .

As stated above, the central question which we have to answer concerns the subject of the dispute decided by the Labour Court vide award dated 5.7.1996. The right to employment on setting aside of the earlier order of termination, the right to wages and the right to obtain work from BHEL is different from the right to status as employees of BHEL. Under the said award respondents 1 to 14 were entitled to obtain work from BHEL through its contractor. They were entitled to wages under the said award. However, under the said award of the Labour Court there is no abolition of contract labour. The Labour Court has not conferred the status of a workman qua BHEL. The Labour Court has not granted permanency to them. Per contra, after holding that the work of mali was supervised and controlled by BHEL, the award makes an enabling provision by directing BHEL to re-employ the said workmen in their service or employ them through the contractor. In fact, the operative part of the award further states that it is the contractors who had failed to retain the workmen and terminated their services in breach of Section 6-N of the said 1947 Act. This enabling direction is given on the footing that the work carried out by these workmen was under control and supervision of BHEL. The observations made in the judgment of the High Court as well as in the judgment of this Court in Bharat Heavy Electricals Ltd.2 (supra) have to be read in the context of the operative part of the award. It is true that, observations have been made by this Court in the above judgment in agreement with the views expressed by the High Court that BHEL had resorted to a camouflage to get the work done through contractor. However, since the work was obtained under supervision and control of BHEL, the award directed these workmen to be employed directly or through the contractor. Therefore, the observations of the High Court and this Court have to be read in the light of the operative part of the award.

For the above reasons, the judgments cited on behalf of respondents 1 to 14 have no application to the facts of the present case. In those judgments, a substantial industrial dispute was raised which is not the case herein. Therefore, they have no application to the present case.

There is one more reason for coming to the above conclusion. There is

a difference between an individual dispute which is deemed to be an industrial dispute under Section 2-A of the said 1947 Act on one hand and an industrial dispute espoused by the union in terms of Section 2(l) of the said 1947 Act. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(l) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In the case of Radhey Shyam and anr. v. State of Haryana and anr. it has been held after considering various judgments of the Supreme Court that, Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 (which is similar to Section 2(l) of the said 1947 Act). Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workmen or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities etc.

As stated above, in the present case the award of the Labour Court has also held that respondents 1 to 14 have proceeded their case on the footing that they were engaged by the contractors, but the work they performed was for BHEL. That is why the operative part of the award says that the said respondents shall be given work by BHEL as direct workmen or through its contractor. The question which we have to answer is: why did the Labour Court provide for an enabling direction in its award? The answer is simple. The Labour Court has not granted a status of direct employment per se because BHEL has its own recognized union and that union was not made a party respondent. Respondents 1 to 14 herein were not recruited directly in BHEL; they had never applied for job in BHEL; the appointment letters appear to have been given by the contractor; BHEL has its own waiting list of workmen, who claimed permanency/ regularization; and they were not before the Labour Court. In the circumstances, the Labour Court has enabled BHEL either to directly employ respondents 1 to 14 or employ them through the contractor. The contractor before us states that respondents 1 to 14 are being given work by him, they were paid wages by the contractor. In the circumstances, the ALC was right in directing BHEL to re-employ respondents 1 to 14 either directly or through the contractor. This order was passed by the ALC on 1.12.2003. The ALC was an execution court. The said order is in terms of the award given by the Labour Court on 5.7.1996.

Accordingly, we set aside the impugned judgment of the High Court by directing BHEL to re-employ respondents 1 to 14 directly or through its contractor. This order will, however, not preclude the workmen from raising an industrial dispute claiming status of direct workmen of the company after joining the recognized union/ concerned union in the said Reference. This order will not prevent the respondents herein from seeking abolition of contract labour in accordance with law.

Accordingly, the civil appeal is disposed of. No order as to costs.