

CASE NO.:
Appeal (civil) 6149 of 2001

PETITIONER:
BONGAIGAON REFINERY & PETROCHEMICALS LTD.

Vs.

RESPONDENT:
SAMIJUDDIN AHMED

DATE OF JUDGMENT: 04/09/2001

BENCH:
R.C. Lahoti & K.G. Balakrishnan

JUDGMENT:

R.C. Lahoti, J.

Leave granted.

Appellant Bongaigaon Refinery & Petrochemicals Ltd. is a Government of India company engaged in the industrial activity of refinery and petrochemicals. On 15th January, 1977, the Central Government took a policy decision, in the interest of rehabilitating by giving employment to persons who were displaced from their lands consequent upon acquisition for establishment of the project, that at least one person in the displaced family shall be given employment in any public sector undertaking. Ahmed Ali Sarkar, the father of the respondent, was such a displaced person. He appears to have a large family. His two sons, namely, Kazimuddin Ahmed and Karamat Ali were given employment by the appellant respectively in the years 1981 and 1982. In the year 1986, the appellant company require some grade-IV staff for which purpose a notification was sent to the employment exchange. Therein it was mentioned that on 17 unreserved posts preference will be given to the candidates whose land was acquired for the appellant company. The name of respondent was sponsored by the employment exchange. On 8th September, 1987, the respondent was offered an appointment on the post of Material Handling Personnel (MHP). Before he could take up the employment he was asked to fill in an attestation form vide Column 21 whereof it was specifically asked if there were any of his relations working with the appellant corporation and to state their names and relationship. The respondent replied NIL. He solemnly declared at the foot of the form that in the event of any material fact having been found to have been mis-stated or wilfully concealed he shall be liable to appropriate action. On 21.9.1987 the respondent gave his joining report which was not accepted by the Manager (Personnel and Administration) for reasons recorded in the file. It was found that the factum of his two brothers having already been given employment under the benevolent scheme promulgated by the Central Government was concealed which fact if disclosed, the respondent would not have been offered employment in the preferred category of displaced persons. On 5.10.1987 the respondent was informed that his joining report was rejected and the letter of appointment was withdrawn. It is stated in the communication dated 5.10.1987 that at the time of interview held on 19.1.1987 the

respondent was specifically put the question whether any of his family members like brothers etc. are working in BRPL and the respondent had replied to the interview board members in negative. The truth of his averments has never been disputed by respondent.

The abovesaid communication dated 5.10.1987 was put in issue by the respondent by filing a civil writ petition before the High Court of Assam. Vide order dated 26.5.1993 the writ petition was dismissed by the High Court holding that the respondent was not entitled to be appointed in the quota in which he had sought for the appointment and therefore respondent was not entitled to any relief. The High Court also held that in cancelling the appointment there was no violation of the principles of natural justice on the part of the appellant. The respondent preferred a writ appeal and therein on 27.7.1993 he sought for withdrawal of the writ petition with the liberty of filing a fresh one on the same subject. This prayer was allowed by the Division Bench.

It appears that the respondent thereafter moved the Central Government by raising an industrial dispute and seeking a reference to Industrial Court for adjudication under Section 10 of the Industrial Disputes Act, 1947. On 1.3.1989 the Central Government rejected the prayer made by the respondent forming an opinion that as the respondent had not actually joined the service he had not become the employee of the company and he was not a workman entitled to raise a dispute under the I.D. Act. Belatedly on 6.10.1993, more than 4½ years after the decision of the Central Government dated 1.3.1989 the respondent sought for review of the decision dated 1.3.1989. He also filed a writ petition some time in the year 1994 seeking a writ of mandamus to the Central Government for disposing of his representation dated 6.10.1993 for review of the order dated 1.3.1989. On 22.11.1994 a learned Single Judge of High Court of Assam disposed of the petition by directing the respondents representation to be disposed of within a period of three months. On 2.6.1995 the Central Government directed the following dispute to be referred for adjudication by the Industrial Tribunal, Guwahati :-

Whether the action of the management of Bongaigaon Refinery and Petro Chemicals Ltd. Dhaligaon, P.O. Bongaigaon, Dist. Goalpara is justified in removing from service Shri Samijuddin Ahmed, workman on the ground that the workman has given false information to seek employment against land oustee quota? If not, to what relief the concerned workman is entitled to?

The appellant laid a challenge to the order of reference dated 2.6.1995 by filing a writ petition in the High Court. A learned Single Judge held that the reference was entirely misconceived inasmuch as the employment given to the respondent was obtained on concealment of material facts and hence was withdrawn. Inasmuch as the respondent never joined the employment of the appellant the question of making a reference to test the validity of termination of service of respondent did not arise. The order of reference dated 2.6.1995 was directed to be quashed. The respondent preferred a writ appeal. By impugned order dated 14.10.1999 the Division Bench of the High Court has allowed the appeal, setting aside the judgment of the learned Single Judge, and held that the dispute should have been allowed to be adjudicated upon by the Industrial Tribunal. The appellant corporation has filed this appeal by special leave feeling aggrieved by the impugned judgment of the Division Bench.

Having heard the learned counsel for the parties we are of the opinion that the appeal deserves to be allowed and the order of the

Division Bench deserves to be set aside. Documentary evidence filed on behalf of the appellant clearly goes to show that the respondent had never entered into the employment of the appellant. He was offered an employment under a special scheme whereunder employment was available only subject to satisfying certain eligibility conditions. The respondent made a material concealment of facts and tried to secure an employment to which he was not entitled under the scheme. Such material concealment was detected timely and therefore his joining report was not accepted by the competent authority of the appellant company and the same was turned down. This averment made on affidavit and supported by documentary evidence has not been rebutted by the respondent. Inasmuch as the respondent had not entered the employment of the appellant, referring a dispute under Section 10 of the I.D. Act based on assumption that the respondent had entered the service of the appellant and was then removed from service, suffered from material infirmity and was therefore vitiated. The Division Bench was not right in forming an opinion that the controversy raised by the appellant should have been left to be adjudicated upon by the Industrial Tribunal. The Industrial Tribunal cannot go behind the order of reference. It would have tried, on the terms of the reference, the issue of removal from service, and not the issue whether the respondent had at all entered in service. Moreover, between 1.3.1989 and 2.6.1995 nothing new had happened so as to warrant a change of opinion by the Central Government. It has been pointed out on behalf of the appellant that there was still a long queue of persons waiting for employment in the preferred category of displaced persons while the scheme itself has stood withdrawn on 16.1.1989. The respondent by seeking an appointment in the employment of the appellant by making material concealment of facts was attempting to deprive someone else of his legitimate claim for appointment against limited number of vacancies available and the Court should not have extended its helping hand to a non-deserving claimant. Be that as it may we are satisfied that reference of dispute under Section 10 of I.D. Act at the instance of the respondent was wholly unwarranted and uncalled for.

The learned counsel for the respondent relied on Workmen of Dimakuchi Tea Estate Vs. Management of Dimakuchi Tea Estate AIR 1958 SC 353 to submit that in view of Section 2 (k) of I.D. Act a dispute raised by any person even if not a workman *stricto sensu* is competent. But we are not impressed. In the abovenoted case any person was an employee appointed on probation and it was doubtful whether he was a workman or not. The case did not relate to a person never employed and yet claiming to be workman. It was held that any person cannot be read without limitation and a person in respect of which the employer-employee relationship never existed and can never possibly exist cannot be the subject matter of dispute between employers and workmen. The present case does not satisfy the tests laid down vide para 21 of the decision cited so as to warrant the validity of reference being upheld.

The appeal is allowed. The judgment of the Division Bench is set aside and that of the learned Single Judge is restored. No order as to the costs.

. J.

(R.C. Lahoti)

. J.

(K.G. Balakrishnan)

September 4, 2001.

JUDIS