

BRIJBHUSHAN YADAV AND ORS.

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v

UNION OF INDIA AND ANR.

SEPTEMBER 14, 2007

[TARUN CHATTERJEE AND P. SATHASIVAM, JJ.]

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Industrial Disputes Act, 1947 :

S. 25-F—Claim of workmen that they were directly appointed by Department after their contract through agency was over—Labour Court accepted the claim and set aside termination order—High Court quashed award of Labour Court—Before Supreme Court, Department sought permission to file additional documents to support stand that all workmen were employed by Agency and not by Department—Matter remitted to High Court for fresh disposal with reference to the said aspect.

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D

The case of appellants-workmen was that they were appointed on 1.10.1996 as Security guards through an agency and after expiry of agreement on 1.10.1997, workmen concerned were provided work by the Telecom Department till 31.5.1999, and thereafter it was direct master and servant relationship between the Department and the workmen and, that since workmen had rendered continuous service of security guard for more than 240 days, their termination was bad.

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Labour Court accepted the case of workmen and ordered reinstatement with full back wages. The High Court relying on assertion of department held that the contract with security agency was extended from time to time till 31.5.1999 and finding that workmen were not employees of Telecom Department quashed the award of Tribunal.

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In appeal to this Court, workmen contended that after expiry of the agreement i.e. from 1.11.1997 although the workmen were employed by the Telecom Department up to 31.5.1999, the High Court ought not to have interfered with the finding of fact arrived at by the Labour Court.

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Disposing of the appeal and remitting the matter to High Court, the Court

- A HELD : The perusal of the order of the High Court does not show that any specific reference and discussion was made to the order/orders extending their contract with security agency up to 31.05.1999. In fact, before this Court, respondents-Department have filed an application for permission to file additional documents in support of their stand that all the workmen were employed by the security agency and not by the Department. Inasmuch as the agreement or contract up to 31.5.1999 with the security agency are relevant materials for consideration of the issue raised in the reference and in the absence of any specific discussion and finding by the High Court, ends of justice would be met by remitting the matter to the High Court for fresh disposal with reference to the said aspect. Both the Department as well as the workmen are permitted to place all the relevant material before the High Court in support of their respective claim and it is for the High Court to decide the issue on merits. [Paras 12, 13 and 14] [1015-C-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4264 of 2007.

- D** From the Judgment and Order dated 08.08.2005 of the High Court of Judicature at Allahabad in C.M.W.P. No. 22316, 22318-22323, 22325 22327, 22328, 22332, 22334, 23517, 23521, 23522, 23525, 23526, 23533 and 23538 of 2003.

Amit Kumar for the Appellants.

- E** R.D. Agrawala, Pavan Kumar and Sumit Kr. Thakur for the Respondents.

G. Prakash and V.K. Verma for UOI.

The Judgment of the Court was delivered by

- F** **P. SATHASIVAM, J.** 1. Leave granted.

- G** 2. The workmen who secured an award for reinstatement with full back-wages at the hands of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow (in short "Tribunal-cum-Labour Court") and lost before the High Court of Judicature at Allahabad are the appellants before this Court.

- H** 3. The above appeal is directed against the order dated 08.08.2005 whereby the High Court of Judicature at Allahabad allowed the batch of writ petitions filed by the Union of India—Ministry of Telecommunication, Bharat Sanchar Nigam Limited and quashed the award passed by the Tribunal-cum-Labour Court.

4. Though the Tribunal-cum-Labour Court passed a separate but identical order holding that the termination of services of the workmen concerned are void and ordered reinstatement with full back-wages, the Union of India and Bharat Sanchar Nigam Limited challenged the same before the High Court by filing separate writ petitions. A

5. The High Court, by advertng to the facts in I.D. No. 39 of 2001, namely, *Shri Brijbhushan Yadav v. The General Manager, Telecom Department*, accepted the stand of the department and quashed the award therein. Similar orders have been passed in all other connected writ petitions. B

6. We heard Mr. Amit Kumar, learned counsel for the appellants and Mr. R.D. Agrawala, learned senior counsel for the respondents. C

7. In view of the order to be passed hereunder, we are of the view that it is unnecessary to refer all the factual matrix as stated by the parties. On the basis of the request made by the workman, the Central Government, in exercise of powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the industrial dispute between Shri Brijbhushan Yadav and the General Manager, Telecom Department, Varanasi for adjudication. The reference referred for adjudication is as under: D

"Whether the action of the Management of Telecom Department in terminating the services of Shri Brijbhushan Yadav w.e.f. 1.6.1999 is justified? If not, to what relief the workman is entitled?" E

According to the workman, he was initially appointed as Security Guard with the Telecom Department, Varanasi (East), Varanasi w.e.f. 1.10.1996 and he was performing his duties till his services were terminated w.e.f. 1.6.1999. There was no genuine contract labour system in vogue with the Telecommunication Department to engage security guards. The so-called security agency i.e. M/s Security and Protection Services was a mere name lender and almost a broker or agent of Telecommunication Department for procuring labour and was not a registered licensee contractor. He worked for more than 240 days in preceding twelve calendar months prior to his termination. His termination without notice or retrenchment compensation is contrary to provisions of Section 25-F of the Industrial Disputes Act, 1947 and he is entitled to reinstatement with back-wages. F G

8. According to the employer—Telecommunication Department, there was temporary need of security guards for safety of its assets, hence, an H

A agreement was signed between M/s Security and Protection Services, Varanasi and the General Manager (East), Varanasi on 10.9.1996. Under the terms of the contract, the workman was supplied by the said security services, to perform work of security guard and he was performing duties of security guard since 1.10.1996. In order to protect the articles and equipments of telecom department, the Telecom Department had entered into a contract with M/s Security and Protection Services on the terms and conditions mutually agreed upon. The same was duly registered by the Labour Commissioner. The agreement was for fixed term, which expired. The workman was not taken as an employee of the Telecom Department nor had worked for more than 240 days and so, the notice or retrenchment compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 is not applicable.

9. The Tribunal-cum-Labour Court, after considering the materials, held that since after expiry of the agreement i.e. on 31.10.1997, all the workmen including Shri Brijbhushan Yadav were provided work by the Telecommunication Department till 31.05.1999, there was direct master and servant relationship between the Department and the Workman during the said period and observed that the workman rendered continuous service of security guard for 570 days directly under the Department which is more than 240 days and is covered by the definition of "continuous service" as defined under Section 25-B of the Industrial Disputes Act, 1947. The Tribunal-cum-Labour Court, by applying the benefits of provisions of Section 25-F of the Industrial Disputes Act, 1947 accepted the case of the workman and passed the award granting reinstatement with full back- wages. Similar awards have been passed in respect of others.

10. In the writ petitions filed by the Union of India and BSNL, the High Court mainly relying on the assertion of the Department that contract with Security Agency—M/s Security and Protection Services, Varanasi was extended from time to time till 31.5.1999 and finding that the workmen concerned were not employees of the Telecommunication Department quashed the award of the Tribunal.

11. Before us, learned counsel appearing for the Workman, vehemently contended that after expiry of the agreement i.e. from 1.11.1997 although the workmen were employed by the Telecom Department up to 31.5.1999, the High Court ought not to have interfered with the finding of fact arrived at by the Tribunal-cum-Labour Court. On the other hand, learned counsel appearing for the Department, by pointing out that contract was extended up to 31.5.1999

with the Security Agency, the High Court was right in accepting the stand of the Department that these workmen were not employees of the Department, hence, there is no ground for interference. A

12. We have carefully considered the relevant materials and rival contentions. Though the High Court passed a lengthy order adverting to various factual aspects as well the decisions of this Court, as rightly pointed out, various orders said to have been executed extending the contract up to 31.05.1999 by the Department with the security agency have not been fully highlighted by the High Court. If it is established that after 30.10.1997, there was no valid contract between the security agency and the Department, the stand of the workmen that they were continued as security guards by the Telecom Department is to be accepted. As observed earlier, perusal of the order of the High Court does not show that any specific reference and discussion was made to the order/orders extending their contract with security agency up to 31.05.1999. B C

13. In fact, before this Court, respondents-Department have filed an application for permission to file additional documents as Annexures R-3 to R-8 in support of their stand that all the workmen were employed by the security agency and not by the Department. Inasmuch as the agreement or contract up to 31.5.1999 with the security agency are relevant materials for consideration of the issue raised in the reference and in the absence of any specific discussion and finding by the High Court, we are of the view that ends of justice would be met by remitting the matter to the High Court for fresh disposal with reference to the said aspect. Though we adverted to certain factual details of both the parties, it is made clear that we have not expressed any opinion on merits. D E

14. In the light of what is stated above, we set aside the impugned order passed by the High Court in all these matters and remit the same to the High Court for fresh disposal after rendering a specific finding as to the subsistence/existence of agreement or contract with the security agency up to 31.05.1999 and pass appropriate orders. Both the Department as well as the workmen are permitted to place all the relevant material before the High Court in support of their respective claim and it is for the High Court to decide the issue on merits as mentioned above as early as possible. F G

15. The appeal is disposed of on the above terms. No costs.