EMPLOYERS IN RELATION TO THE MANAGEMENT OF BHALGORA AREA (NOW KUSTORE AREA) OF M/S BHARAT COKING COAL LTD.

v.

WORKMEN BEING REPRESENTED BY JANTA MAZDOOR SANGH

(Civil Appeal No. 4901 of 2021)

SEPTEMBER 07, 2021

[SANJAY KISHAN KAUL AND HRISHIKESH ROY, JJ.]

Labour Laws – Appointment – Illegal practices – Management of a Government undertaking terminated 38 workmen on the ground that they, in connivance with a Personnel Manager and a Dealing Assistant, dishonestly secured appointments – Industrial Tribunal concluded that the Management failed to substantiate the charge of manipulated appointment – Concerned workmen were directed to be reinstated with 50% back wages – Single Bench of High Court allowed writ petition in favour of the Management – LPA – Division Bench however decided in favour of the workmen – On appeal, held: The appointees did not figure in either of the lists, sponsored by the jurisdictional Employment Exchange and were beneficiaries of a fraudulent process – Moreover, the contradictory stand of the workmen at different stages would suggest that they were conscious and aware of being appointed through a non-bonafide process – In any case, the appointments were contrary to the requirements of the 1959 Act – Fraudulent practice to gain public employment cannot be countenanced to be permitted by a Court of law – The sanctity of public employment, as a measure of social welfare and a significant source of social mobility, must be protected against such fraudulent process which manipulates and corrupts the selection process – The Courts as sentinel of justice must strive to ensure that employment programmes are not manipulated by deceitful middlemen, thereby setting up a parallel mechanism of Faustian Bargain – One cannot condone false projections so as to circumvent the statutorily prescribed procedure for appointments – Such illegal practices must be interdicted by the Courts –

A *Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.*

Allowing the appeal, the Court

HELD:1. The Single Judge of the High Court should not have been overruled by the impugned judgment by ignoring the key fact that the appointees did not figure in either of the lists, sponsored by the jurisdictional Employment Exchange and that they were beneficiaries of a fraudulent process. Enough materials were presented to the Tribunal to justify the action against the illegally appointed workmen, and as such the appellants cannot be made to suffer the consequence of the misconduct of their two errant employees against whom, disciplinary actions were taken by the Management. Moreover, the contradictory stand of the workmen at different stages would suggest that they were conscious and aware of being appointed through a non-bonafide process. In any case, the appointments were contrary to the requirements of the the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. [Para 14][83-H; 84-A-B]

2. Fraudulent practice to gain public employment cannot be countenanced to be permitted by a Court of law. The workmen here, having hoodwinked the Government Undertaking in a fraudulent manner, must be prevented from enjoying the fruits of their illgotten advantage. The sanctity of public employment, as a measure of social welfare and a significant source of social mobility, must be protected against such fraudulent process which manipulates and corrupts the selection process. Employment schemes floated by the State for targeted groups, can absorb a finite number of workmen. To abuse the legitimate process therefore would mean deprivation of employment benefits to rightful beneficiaries. The Courts as sentinel of justice must strive to ensure that such employment programmes are not manipulated by deceitful middlemen, thereby setting up a parallel mechanism of Faustian Bargain. Often, desperate job aspirants' resort to such measures to compete for limited vacancies, but this Court cannot condone false projections so as to circumvent the statutorily prescribed procedure for appointments. Such illegal practices must be interdicted by the Courts. [Para 17][85-E-H; 86-A]

3. The reversal of the well-reasoned order of the Single Judge is found to be unjustified. The LPA judgment is set aside and the decision of the Single Judge is restored. [Para 18][86-B]

Union of India v. M.Bhaskaran, **(1995) Supp. 4 SCC 100 : [1995] 4 Suppl. SCR 526** *and Chairman and Managing Director, Food Corporation of India & Ors. v. Jagdish Balram Bahira & Ors.,* **(2017) 8 SCC 670 : [2017] 11 SCR 271 – relied on.**

Case Law Reference

[1995] 4 Suppl. SCR 526	**relied on**	**Para 15**
[2017] 11 SCR 271	**relied on**	**Para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4901 of 2021.

From the Judgment and Order dated 11.02.2016 of the High Court of Jharkhand at Ranchi in Letter Patent Appeal Being L.P.A. No.334 of 2008.

Anupam Lal Das, Sr. Adv., Amit Sharma, Ms. Pallavi Barua, Ms. Anisha Upadhyay, Nishant Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Leave granted. This appeal has been preferred by the Management against the judgement dated 11.02.2016 in the L.P.A. No.334/2008 whereby, the Division Bench of the High Court of Jharkhand had set aside the order passed by the learned Single Judge and restored the Award dated 28.09.2005 passed by the Central Government Industrial Tribunal No.1 Dhanbad whereby, the workmen-respondents were directed to be reinstated with 50% back wages.

2. We have heard Mr. Anupam Lal Das, learned Sr. counsel appearing for the Management. The respondent-Union who were espousing the interest of the discharged workmen, is represented by Ms. Anisha Upadhyay, the learned counsel.

3. The appellants are the Management of Bhalgora Area of M/s Bharat Coking Coal Limited ('BCCL' for short), a Central Government Undertaking within the meaning of Section 617 of the

A Companies Act, 1956. By virtue of their status, the BCCL is required to process their recruitment, by notifying the vacancies and requisitioning names from the jurisdictional Employment Exchange, under the provisions of the *Employment Exchange (Compulsory Notification of Vacancies) Act, 1959* (for short, *'the 1959 Act'*)

B 4. In 1986, the BCCL decided to recruit Scheduled Castes/ Scheduled Tribes candidates in vacancies of miners/loaders. Accordingly, the Management of BCCL made requisition from the Employment Exchange on the basis whereof, list of eligible SC/ST candidates for appointment was prepared. As a matter of fact**,** such C list did not contain the names of any of the 38 workmen whose case is represented by the respondent-Trade Union. The allegation is that those 38 job aspirants, in connivance with a Dealing Assistant and a Personnel Manager of the Bhalgora Area of BCCL, dishonestly secured appointments. When such fraudulent appointments was detected, disciplinary proceedings were drawn up against the concerned Dealing D Assistant and the Personnel Manager and eventually both were removed from service. Parallelly, Charge Memo was issued against the concerned miners/loaders and following the adverse finding in the departmental inquiry, the beneficiaries of the fraudulent appointment process were terminated from service.

E 5. The case of the 38 workmen was taken up by the respondent-Trade Union and in the Reference Case No.98 of 1994, the Central Government Industrial Tribunal No.1 Dhanbad (hereinafter referred to as, 'the Tribunal' for short) concluded that the Management failed to substantiate the charge of manipulated appointment as the F concerned witness i.e. the dealing clerk Jitendra Kumar Adeshra and the Personnel Manager PM Prasad, were not examined to prove the charge of unmerited appointment being secured by the workmen, in connivance with the said two employees of the Organization. For the perceived failure of the Management to justify their action, the termination orders were interdicted by the Tribunal and the concerned G workmen were directed to be reinstated with 50% back wages.

6. Aggrieved by the Tribunal's Award dated 28.09.2005, the Management filed the W.P.(L) No.1916 of 2006, challenging the finding and the direction of the Tribunal. The learned Single Judge noted that the specific case of some of the workmen in their reply to the charge- H memo was that their names figured in the Employment Exchange

sponsored list, sent from Bhowra area to Bhalgora area and in this way, they tried to show that they were legally appointed. But in their Written Statement filed before the Tribunal in a clear departure from their earlier stand, the workmen on the second occasion contended that their appointments were made by the General Manager of the Bhalgora area independently and this was not related to the Employment Exchange sponsored panel, prepared by the Bhalgora area in 1986. While analyzing such contradictory stand, the Writ Court found that the lists sent from the Employment Exchange to the Bhowra area (marked as Exbt.M-3 to M-3/3) and the list sent from Bhowra area to Bhalgora area (marked as Exbt.M-4/1 to M-4/4) were available on record before the Tribunal. The names in the lists were verified and it was found that the litigating workmen did not figure in those lists. The disciplinary action taken against the Dealing Clerk and the Personnel Manager on the charge of facilitating fraudulent employment for the 38 workmen, was also noted by the learned Judge. In consequence, having regard to the materials on record, it was concluded that the Tribunal erroneously answered the reference against the Management. It was accordingly held that the reinstatement order for the workmen, was unmerited. Adverting to the contradictory stand of the workmen to lend legitimacy to their appointment, the Court's conclusion was that the Tribunal misdirected itself in allowing the workmen to depart from the earlier stand on the premises that the workmen were appointed by the General Manager independently and without reference to the lists sent from the Employment Exchange. On this aspect, it must be observed that the legitimacy of the appointment cannot be tested on the touchstone of two contradictory projections. If either one is accepted, the next one has to be discarded. Thus, it is reasonable to hold that the appointees failed to establish that their appointments were legitimate and should therefore, be immune from interference.

7. It is also relevant to record herein that the Management witness Ram Janam Sigh (M-1), who was the Deputy Personnel Manager in Bhowra area at the relevant time, while proving the Exbt. M-3 series and M-4 series had pointedly testified that the M-3 series Exbts. were the lists received from the Employment Exchange from which, few were appointed in Bhowra area and the remaining persons whose names find place in M-4 series Exbts, were then appointed in the Bhalgora area. From the materials the Court formulated that the main question to be examined is whether the names of the workmen

A figured in the Employment Exchange sponsored lists. It was then found that they did not. The learned Judge accordingly held that the Management has proved that it is a case of unmerited appointment and the workmen were the beneficiaries of a fraudulent process.

8. The Court was also of the view that the burden was on the B Union to establish that the workmen were lawfully appointed but since such onus was not discharged by the Union, the Writ Petition was allowed in favour of the Management, and against the workmen.

9. Aggrieved by the decision of the learned Single Judge, the Union filed the LPA No.334 of 2008 before the High Court. The C Division Bench, on the perceived failure of the Management to adduce material to justify the termination orders, decided in favour of the appointees. In this way, the fraudulent process through which the workmen secured appointment was not given due weightage by the Division Bench. The fact that the names of the workmen did not figure in the lists sponsored by the Employment Exchange and as a corollary, D the appointments would be contrary to the prescription in *the 1959 Act,* was also significantly overlooked, in the LPA proceeding. The names of the workmen did not as a matter of fact, figure in the Exbt.M-3 series and Exbt.M-4 series and yet, without regard for this most relevant aspect, the Division Bench erroneously concluded that the Management E failed to adduce requisite evidence on un-merited appointment, secured by the workmen.

10. At this stage it would be relevant to state that the records of the domestic enquiry leading to the termination orders were made available by the Management to the Tribunal. All the exhibits from page F 1 to page 454, including the approval of the General Manager for the discharge of the workmen on the recommendation of the Project Officer, the Exbt.M-2 chargesheets, as also the domestic enquiry proceedings were all presented to the Tribunal by the Management. To claim legitimacy for their appointment, few of the workmen in their response to the chargesheet as noted earlier, claimed that their names G figured in the lists sponsored by the Employment Exchange. But in their Written Statement, the workmen pleaded differently and claimed that they were appointed by the General Manager of the Bhalgora area, independently and without reference to the lists from the Employment Exchange. Such diametrically opposite stand of the workmen on how H they secured appointment, (predicated on two versions which naturally

can not stand together), should have in our view, persuaded both the Tribunal as also the Division Bench to answer the reference in favour of the Management.

11. In the present case, the Management's consistent stand has been that it was a case of fraudulent appointment in connivance with the Dealing Assistant and Personnel Manager, who faced disciplinary action for facilitating wrongful appointment. It is also noteworthy that the appellant as a Government Undertaking, is under a statutory obligation under *the 1959 Act,* to make appointments only through the Employment Exchange. But this was not done in this case for the 38 litigating workmen. The names of the respondent-workmen, as earlier noted, did not figure in either of the two lists relatable to the Employment Exchange. Moreover, the workmen, as can be seen, failed to discharge their burden and took the contradictory stand in a desperate attempt to convey legitimacy to their appointment.

12. We must also be conscious of the fact that departmental action was taken by the appellant against the errant Personnel Manager and the Dealing Assistant, for their misconduct in facilitating unmerited appointment to the 38 workmen through a fraudulent process. In this regard, usefully it can be noted that the Dealing Assistant and the Personnel Manager were dismissed for their misconduct. For the record, the Dealing Assistant's dismissal was upheld by the Tribunal on 13.06.2000 in the Reference No.5/97. The dismissal order against the Personnel Manager was although interfered by the High Court but on appeal by the Management, the case was remanded to the High Court for fresh adjudication. Since then, the Personnel Manager has reached the age of superannuation. These would suggest that the appellant pursued the issue of unmerited appointment, both against the facilitators and also the beneficiaries.

13. In the above perspective, the reference in our opinion, was erroneously answered by the Tribunal, against the Management. In the process, the steps taken by the Management to undo the wrong done by the two delinquent employees to facilitate unmerited appointment, was undeservedly interdicted by the Tribunal.

14. The learned Single Judge should not have been overruled by the impugned judgment by ignoring the key fact that the appointees did not figure in either of the lists, sponsored by the jurisdictional Employment Exchange and that they were beneficiaries of a fraudulent

process. Enough materials were presented to the Tribunal to justify the action against the illegally appointed workmen, and as such the appellants cannot be made to suffer the consequence of the misconduct of their two errant employees against whom, disciplinary actions were taken by the Management. Moreover, the contradictory stand of the workmen at different stage would suggest that they were conscious and aware of being appointed through a non-bonafide process. In any case, the appointments were contrary to the requirements of *the 1959 Act.*

15. In *Union of India Vs. M.Bhaskaran*[1], on similar facts of fraudulent appointment, Justice S.B. Majumdar writing for a Division Bench rightly expressed the following,

> "6. …the concerned railway employees, respondents herein have admittedly snatched employment in Railway service, may be of a casual nature, by relying upon forged or bogus casual labourer cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the concerned employees. Consequently, it has to be held that respondents were guilty of misrepresentation and fraud perpetrated on the appellant employer while getting employed in Railway service and had Snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer cards. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer- appellant after following the due procedure of law and complying with the principles of natural justice."

[1] (1995) Supp. 4 SCC 100

16. We also endorse the opinion of Justice D.Y. Chandrachud, writing for a three judges' Bench in *Chairman and Managing Director, Food Corporation of India & Ors. Vs. Jagdish Balram Bahira & Ors.*[2], where the Court has noted the responsibility of Courts to guard against fraudulent employment, especially when such appointment is obtained by perpetuating fraud upon the authorities,

> "4. …Public employment is a significant source of social mobility. Access to education opens the doors to secure futures. As a matter of principle, in the exercise of its constitutional jurisdiction, the court must weigh against an interpretation which will protect unjust claims over the just, fraud over legality and expediency over principle. As the nation evolves, the role of the court must be as an institution which abides by constitutional principle, enforces the rule of law and reaffirms the belief that claims based upon fraud, expediency and subterfuge will not be recognised. Once these parameters are established with a clear judicial formulation individual cases should pose no problem. Usurpation of constitutional benefits by persons who are not entitled to them must be answered by the court in the only way permissible for an institution which has to uphold the rule of law. Unless the courts were to do so, it would leave open a path of incentives for claims based on fraud to survive legal gambits and the creativity of the disingenuous."

17. Fraudulent practice to gain public employment cannot be countenanced to be permitted by a Court of law. The workmen here, having hoodwinked the Government Undertaking in a fraudulent manner, must be prevented from enjoying the fruits of their ill-gotten advantage. The sanctity of public employment, as a measure of social welfare and a significant source of social mobility, must be protected against such fraudulent process which manipulates and corrupts the selection process. Employment schemes floated by the State for targeted groups, can absorb a finite number of workmen. To abuse the legitimate process therefore would mean deprivation of employment benefits to rightful beneficiaries. The Courts as sentinel of justice must strive to ensure that such employment programmes are not manipulated by deceitful middlemen, thereby setting up a parallel mechanism of Faustian Bargain. Often, desperate job aspirants' resort to such

[2] (2017) 8 SCC 670

A measures to compete for limited vacancies, but this Court cannot condone false projections so as to circumvent the statutorily prescribed procedure for appointments. Such illegal practices must be interdicted by the Courts.

18. For the aforesaid reasons, the reversal of the well-reasoned B order of the learned Single Judge is found to be unjustified. The appeal accordingly stands allowed by setting aside the LPA judgment and restoring the decision of the learned Single Judge. It is ordered accordingly. The parties to bear their own cost.

Bibhuti Bhushan Bose Appeal allowed.