

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition Nos.5602-5604 of 2009

Bangladesh Forest Industries Development
Corporation (BFIDC) and another

... Petitioners in all the writ petitions

-Versus-

Labour Appellate Tribunal, Dhaka and another
...Respondents in all the writ petitions

Mr. Masud R. Sobhan with Mr. A.F.M. Saiful
Karim, Advocates

... for the petitioners

No one appears for the respondents

Judgment on 30.04.2013

Md. Ruhul Quddus, J:

These three writ petitions arising out of a common judgment and order dated 23.03.2009 passed by the Labour Appellate Tribunal, Dhaka in IRO Appeal Nos.7-12 of 2004 involving common questions of law and facts have been heard analogously and are being disposed of by one judgment.

Facts leading to issuance of the Rules, in brief, are that the petitioner Bangladesh Forest Industries Development Corporation (BFIDC) is a statutory authority under which the respondent-workers

(petitioners before the Labour Court) have been working as tapers since 1995-96. In spite of completion of more than four years in employment, their services were not confirmed. In that event the respondent-workers, namely Ruellah Marma (respondent 2 in writ petition No. 5602 of 2009), Chathowai Ong Marma (respondent 2 in writ petition No.5603 of 2009) and Chaishi Ong Marma (respondent 2 in writ petition No.5604 of 2009) and three other workers of the petitioner-corporation filed IRO Case Nos.126-131 of 2002 before the First Labour Court, Chittagong seeking direction for confirmation of service with back wages. After hearing, the Labour Court allowed all the cases in part by a common judgment and order dated 21.04.2005 directing the petitioner-corporation to take appropriate steps for their confirmation.

Being aggrieved thereby, Bangladesh Forest Industries Development Corporation and its Manager of Haludia Rubber Garden as appellants preferred IRO Appeal Nos.7-12 of 2004 before the Labour Appellate Tribunal, Dhaka. The Appellate Tribunal heard the appeals analogously and dismissed the same by a common judgment and order dated 23.03.2009, which is impugned herein.

Mr. A. K. M. Saiful Karim, Advocates for the petitioners submits that the respondent-workers were employed under a contract and the Industrial Relation Ordinance was not applicable for them and therefore, the IRO cases before the Labour Court were not maintainable. Moreover, the respondent-workers claim their right of confirmation on the basis of an office order being No.44 dated

22.01.1997 of the petitioner-corporation. But in the said order it was stipulated that the tapers after satisfactory completion of four years in service, would be confirmed. Since the respondent-workers could not perform satisfactorily and achieve the production target, the petitioner-corporation had no obligation to confirm them according to the said office order. The Courts below without considering this vital aspect of the cases passed their respective judgment and orders, and thereby committed gross illegality.

We have considered the submissions of the learned Advocate for the petitioner and perused the documents. In the written statements, the petitioner brought some stereo-type allegations against the workers. But it does not appear that on those allegations they were served with any show cause notice or any departmental proceeding was ever commenced against them. In absence of any such proceeding the allegations raised therein cannot be presumed to be correct. It is rather admitted that the respondent. workers have been working in the corporation till today. No agreement between the corporation and respondent-workers has been annexed to substantiate the argument advanced by the learned Advocate for the writ petitioner that they were actually contractual employees. Even if there was any contract, that cannot prevail over the law to regulate the service condition of a worker. An unsigned blank form for giving consent to work as a taper according to the terms and conditions of the petitioner-corporation as contained in notification No.m`/ms/1-9(9)/93-94/1265(20) dated 26.09.1995 (last page of annex-A). This unsigned blank form

prepared for the purpose of taking consent from the tapers cannot be a contract. Moreover, this form of consent even if filled up and signed by a weaker party cannot operate as estoppels against the workers on the way of their confirmation.

The Chairman in-charge of the Labour Appellate Tribunal in passing the impugned judgment also observed that the respondent. workers were not warned for their unsatisfactory performance and there was no evidence in record to that effect. Now sitting in writ jurisdiction, this Court cannot consider any contrary materials produced by the petitioner.

In view of the above, we do not find any substance in the Rules. Accordingly, all the Rules are discharged. The orders of stay granted earlier are vacated.

Communicate the judgment to the Labour Appellate Tribunal, Dhaka with a copy to the First Labour Court, Chittagong.

Mohammad Bazlur Rahman, J:

I agree.