writ petition itself it is reflected that around 2016 claims of workmen / employees were received, but on perusal of the books of accounts and record, the Liquidator admitted claims of 6337 workmen/ employees. Therefore the details of all the workmen of the petitioner-Company are with the Liquidator.

64. The lay-off having been held to be unjustified and illegal by the Industrial Tribunal, what follows is that all the workmen who were not employed after lifting of the lock-out with effect from 15.04.2007 and were laid off, would be entitled to full wages, allowances and consequential benefits as directed by the Industrial Tribunal. Any amounts received by them towards lay-off compensation shall be adjusted. However, as observed above, the workmen would only be entitled to receive / recover their dues in accordance with the provisions of Section 53 of the Code.

65. Subject to the aforesaid observations, this writ petition is **disposed of.**

(2022)02ILR A834
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.12.2021

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.

Writ C No. 23288 of 2021

F.C.I. & Anr. ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Vijay Kumar Dixit, Ashok Mehta (Sr. Advocate)

Counsel for the Respondents:
A.S.G.I., Sri Gaya Prasad Singh, Sri Shri Krishna Mishra, Sri Ritesh Kumar

A. Labour Law – Contract Labour (Regulation and Abolition) Rules, 1971 – Rule 25(2)(v)(a)&(b) – Workmen employed by the contractor – However, the order for payment of wages was passed directly to the Principle employer – Validity challenged – Contractor was not made party – Effect – Held, no order could have been passed directly asking the principal employer for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be issued to the contractor and, therefore, the direction which had been issued to the principal employer could not have also been issued at all – Held further, if the contractor despite any order being made under Rule 25(2)(v)(a) &(b), did not pay wages, then the principal employer could be made liable to pay the wages (Para 15)

B. Constitution of India – Article 226 – Writ – Maintainability – Contract Labour (Regulation and Abolition) Rules, 1971 – Alternative remedy to file appeal u/s 15 of the Act – Impugned order was passed by the same authority, before whom the appeal is to be filed – Effect – Held, since the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie – High Court entertained the writ petition. (Para 17)

Writ petition allowed. (E-1)

(Delivered by Hon'ble Siddhartha Varma, J.)

1. This writ petition has been filed for the quashing of the judgement and order dated 9.7.2017 passed by the respondent no. 1.

2. The respondent no. 2 had filed before the respondent no.1 an application under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, with regard to 40 workers working in the FSD Basti under the District Area Manager, Gorakhpur. The request was with regard to the payment of wages to the 40 workers which according to the respondent no. 2 ought to have been similar to the wages which were being paid to workers who were working for the Food Corporation of India, FSD Basti (hereinafter called "the FCI). The application which was filed by the respondent no. 2 on 5.11.2018 was filed with an allegation that the Union i.e. the respondent no. 2 was functioning in the FCI and watching the interest of its workers working in the FCI employed directly or through contract labour system. It had been stated in the application that the union had espoused the cause of its members who were working in the depot at Basti for the last several years and therefore they were praying for pay parity for the casual workers with the pay which was being paid to the workers who were directly employed under the FCI. In the application, it was also stated that the Union also expected that its member would also be regularized.

3. The petitioner filed its objections/written submissions in the month of January 2019 and, in fact, prayed that since the application of the Union was filed under the Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, it was understood that the Union was asking for a payment from the contractor who had engaged the workers on behalf of the principal employer i.e. the FCI, and, therefore, if any order had to be passed by the Deputy Chief Labour Commissioner then it would be against the contractor who had employed the members of the Union. It was also stated in the objection that since the contractor who was an essential party was not made a party, the case could not continue. Still further it was alleged in the objection/written submissions of the petitioner that the allegation that 40 contract labourers were working was false. It was stated that the contractor had licence only to employ 21 labourers and, therefore, the allegation itself was misfounded. It was alleged that by the filing the application, indirectly, the Union wanted to get around 40 persons regularized.

4. After the objection was filed, an inspection was also done on 15.3.2021 and in the inspection which was done in the presence of the Division Manager, FCI, Gorakhpur; the Manager (S&C) FCI, Gorakhpur; the Manager (D) FCI Basti; the Manager (Contract) FCI R.O. Lucknow and the representatives of the contractor M/s. Radhey Shyam Yadav, Sri Rajeev Paswan, 22 persons were found working. The Division Manager, FCI, Gorakhpur, had informed the team which had made the inspection that the workers were casual employees and that they were being paid their wages by the contractor as per the wages fixed by the Government. The team was also informed that since there were no permanent workers at the place where the 22 workers were working there was no question of any parity. However, the complainant-Union was absent at the time of inspection.

5. Despite the objection made by the petitioner, the Deputy Chief Labour Commissioner (Central), the respondent no. 1, passed an order on 9.7.2021 directing the petitioner FCI to identify and ensure the payment of wages to the contract labourers

who were employed at the FSD Basti on the basis of the register of wages. It was also directed that any difference between the wages which were being paid and the wages which ought to have been paid was to be made good to the workers.

6. The petitioner instead of filing any Appeal which is provided under Section 15 of the Contract Labour (Regulation and Abolition) Act, 1970, approached the High Court directly as the Appellate Forum which has been provided by the notification dated 28.12.2016 by the Central Government itself was the Deputy Chief Labour Commissioner (Central), whose order has been impugned in this writ petition. Furthermore, learned counsel for the petitioner submitted that since the order impugned was so patently illegal as it was filed without the impleadment of the contractor that no useful purpose would have been served by filing any Appeal.

7. The petitioner while assailing the order of the Deputy Chief Labour Commissioner dated 9.7.2021 essentially argued that the application which was filed under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, itself was not maintainable under the Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971. If the contractor under whom the workmen were employed was not paying wages which were similar to the payments which were being made by the principal employer then a direction could only be issued to the contractor directing him to pay salaries to its labourers which would be similar to the salaries which were being given to the workers who were directly employed by the principal employer i.e. the FCI.

8. Learned counsel further, therefore, argued that without the impleadment of the contractor no order could have been passed under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971.

9. Still learned counsel for the petitioner submitted that in the garb of the order which had been passed by the Deputy Chief Labour Commissioner, the respondent no. 2 virtually was praying for the regularization of its member. Since the learned counsel for the petitioner read out the provisions of Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971 they are being reproduced here as under:-

Rule 25(2)(v)(a) in cases where the **workmen employed by the contractor** perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of **service of the workmen of the contractor** shall be the same as applicable to the workmen directly employed by the principal employer of the established on the same or similar kind of work:

provided that in the case of any disagreement with regard to the type of work the same shall be decided by the [Deputy Chief Labour Commissioner (Central)];

Rule 25(2)(v) (b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the [Deputy Chief Labour Commissioner (Central)];

Explanation:- While determining the wage rates, holidays, hours of work and other conditions of service under (b) above, the Deputy Chief Labour Commissioner (Central) shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employment;

10. Learned counsel for the petitioners further argued that since the facts stated in the application were diametrically opposite to the inspection report, the matter ought to have been referred to the appropriate Government for a reference under the Industrial Disputes Act and, in fact, the matter should not have been dealt with at all by the Authority under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, i.e. the Deputy Chief Labour Commissioner (Central).

11. The counsel appearing for the respondent no. 2, however, submitted that there were 40 members working under the contractor and, therefore, a prayer had been made for the payment to the 40 members. Still further learned counsel for the respondent no. 2 submitted that if the order dated 9.7.2021 was perused then it would become clear that the petitioner was not asked to pay to all the 40 workers. In fact, the petitioner was asked to ensure the payment of wages on the basis of register of wages which was maintained by the contractor. Learned counsel, therefore, submitted that there was no error if the contractor was not impleaded as a party before the Deputy Chief Labour Commissioner (Central).

12. Learned counsel further submitted that since the exercise of finding out as to who were the actual workmen was left open to the principal employer there was no requirement to implead the contractor at all.

13. In the end, learned counsel for the respondent no. 2 submitted that the petitioner had an efficacious alternative remedy of filing an Appeal under Section 15 of the Contract Labour (Regulation and Abolition) Act, 1970.

14. Having heard Sri Ashok Mehta, Senior Advocate, assisted by Sri Vijay Kumar Dixit, learned counsel for the petitioners, Sri S.K. Mishra learned counsel for the opposite party no. 2 and Sri Gaya Prasad Singh learned counsel for the respondent no. 1 and 3, the Court is of the view that the order dated 9.7.2021 cannot be sustained in the eyes of law and, therefore, deserves to be quashed. A bare reading of Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, definitely makes it clear that if any demand had to be made then it had to be made to the effect that the contractor had to pay the salary to its workers which ought to have been at par with the salary of the workers of the principal employer.

15. The contractor was such a person whose service was taken by the principal employer so that the contractor could make available the labour which was required by the principal employer. If the contractor despite any order being made under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, did not pay wages as per the order passed under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, then the principal employer could be made liable to pay the wages and the expenses which would have been incurred by the principal employer in providing amenities could have

been taken by the principal employer from the contractor either by the deduction from any amount which was payable to the contractor or the amount paid by the principal employer would have become a debt payable by the contractor. Definitely, no order could have been passed directly asking the principal employer i.e. the petitioner for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be issued to the contractor and, therefore, the direction which had been issued to the principal employer could not have also been issued at all.

16. Further, the Court finds that there were various issues which had to be thrashed out before any order could be passed and a vague order could not have been passed directing the petitioner to ascertain as to who was working and who was not working.

17. The Court also holds that since the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie.

18. With these observations, the writ petition stands allowed. The order dated 9.7.2021 passed by the Deputy Chief Labour Commissioner (Central) is quashed. The recovery etc. which might have been issued in pursuance of the order dated 9.7.2021 also stands quashed.

19. It shall be open for the respondent no. 2 to claim its dues under appropriate proceedings provided under the law.

(2022)02ILR A838
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.01.2022

BEFORE

THE HON'BLE DINESH KUMAR SINGH, J.

Writ C No. 1003418 of 1980
and other cases

State Of U.P. & Anr. ...Petitioners
Versus
Sone Lal & Ors. ...Respondents

Counsel for the Petitioners:
C.S.C.

Counsel for the Respondents:

A. UP Bhoodan Yagya Act, 1952 – Section 14 – Bhoodan Yagna Committee (BYC) – Power of BYC to distribute the land to landless agricultural labours – Permissibility – Committee formed in 1953 and distribution of land made in 1978, this distribution was made beyond period of three years – Validity challenged – Held, the Bhoodan Committee, Kheri did not have power to distribute the land amongst the respondents in the 1978 and, it was the Collector, who could have distributed the land if there was no notification issued under Section 4 of the Act, 1927 to constitute the land as 'reserved forest' – Held further, the respondents did not become the Bhumidhars on the basis of the alleged patta/lease in their favour. (Para 36 and 37)

Writ petition allowed. (E-1)

List of Cases cited:

1. St. of U.P. Versus Mahant Avaidh Nath; AIR 1977 All 192

2. St. of U.P. Vs Dy. Director of Consolidation & ors.; (1996) 5 SCC 194