

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1981/2008**

% **Date of decision : 12.03.2008**

Jainendra Kumar petitioner
Through: Mr.Jagat Arora, Advocate.

Versus

Airport Authority of India & Others Respondents
Through : Mr.Piyush Sharma, Advocate.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

CM No.3760/2008

Allowed, subject to just exceptions.

WP(C) No.1981/2008

1. The petitioner has impugned the award dated 6th November, 2007 declining the claim of the petitioner for regularization of his

services with the respondents. Reference was made by the Central Government to the Industrial Tribunal cum Labour Court – II by letter dated 5th October, 2004 for adjudication as follows:

“Whether the demand of Shri Jagdeep Kumar and others against the Airport Authority of India, New Delhi for regularization in service of 25 workmen in the list enclosed, engaged in the work of maintenance of CAT-III lighting system on runway is just, valid and legal? If so, to what benefits the workmen concerned are entitled for and what directions are necessary in the matter?”

The petitioner had contended that he along with other persons had been working with the respondents for the maintenance of CAT-III lightening system of main runway and second runway since 2001 which work is of a regular nature, however, for which the tenders were invited from independent contractors having specialization for the work of maintenance of ground lightening facility at IGI Airport. It was asserted that despite the petitioner being the employee of the contractor, the respondent having control over the petitioner's subsistence, skill and continued employment and since the work is not seasonal in nature and it is continuous work and the attendance and duties of the workers/applicant was also regulated and controlled by the respondents, therefore, the petitioner was working under the direct control of the respondents. It was also asserted that the

petitioner was discharging his duties under the supervision and control of the superior official appointed by the respondents. The petitioner also made a grievance that neither the respondent nor AMA Private Ltd., the contractor were registered under The Contract Labour (Regulation & Abolition) Act, 1970 and no permission was obtained for engaging the contract labor nor the appropriate government has accorded permission to the respondents to get the work done from contract labor.

2. The respondents had contested the claim of the workman contending that the petitioner were engaged by the contractor, AMA Pvt. Ltd. for performing the work of irregular nature. The Central Government Industrial Tribunal cum Labour Court II has held that it was the duty of the petitioner to establish their claim that they were under the control and supervision of the management/respondents which could be proved by cogent documentary evidence and the inference that the petitioner was under the supervision and control of the Management, could not be drawn on the basis of the deposition on affidavit only filed by the petitioner. Relying on the fact that no documents have been filed showing that any duty was assigned to petitioner by the respondents and his work was controlled by the Administrative Officer of respondents and the fact that the

appointments were given by the AMA Pvt. Ltd., it was held that the petitioner was not under the supervisors and other officials of the respondents nor he was engaged by the respondents/management. The Tribunal also relied on the fact that no document regarding economic control and control over workers' subsistence, skill and continued employment have been filed and thus holding that the workman has failed to prove the averments of the claim statement and relying on the judgments of the Supreme Court has held that the petitioner was not employed by the respondents nor he was under the supervision and control of the respondents and consequently he is not the employee of the respondents and is not entitled for regularization.

3. The learned counsel for the petitioner has relied on AIR 1995 Supreme Court 1893= (1995) 5 SCC 27, Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha and others to contend that even if the labour contract was genuine, neither the respondent had obtained any prior permission to engage the contract labor for the work being done by the petitioner nor the appropriate Government had accorded permission to the respondent to get the work done through contract labor nor there is any sanction about the contract system in the respondent and section 10 of the Contract

Labor (Regulation & Abolition) Act, 1970 put embargo upon the respondents to employ the contract for the work which is perennial in nature.

4. Perusal of the judgment relied on by the petitioner, Gujarat Electricity Board, Thermal Power Station, Ukai (*supra*), it is apparent that the dispute regarding the abolition of the contract labour and absorption of such employee had to be raised specifically and after receipt of the reference, the Industrial Adjudicator was first to direct the workman to approach the appropriate government for abolition of the contract labor under Section 10 of the Act and keep the reference pending and only if pursuant thereto, if the contract labour is abolished by the appropriate government, the Industrial Adjudicator after giving opportunities to place the necessary material before him to decide whether the workmen of the contractor can be directed to be absorbed by the principal employer and how many of them could be directed and on what terms, could pass such an order. The Supreme Court in Gujarat Electricity Board, Thermal Power Station, Ukai (*supra*) in paragraph 18 on page 63 had held as under:-

“ . Our conclusions and answers to the questions raised are, therefore, as follows:

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the

provisions of the said section. No court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is a sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is a sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is a sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. **However, the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be**

directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms.

5. The finding of the Tribunal that the agreement between the respondents and the contractor is not sham does not suffer from any manifest error. The learned counsel for the petitioner is unable to show any ground on the basis of which said finding can be interfered with.

6. Therefore the finding of the Court is that agreement between the respondents and the contractor is genuine and is not a sham document and the direct employees of the respondents have not approached the Industrial adjudicator for abolition of contract labor. In the facts and circumstances, the petitioner cannot claim any relief on the basis of ratio of Gujrat Electricity Board, Thermal Power Station, Ukai. The petitioner also did not approach the appropriate government for abolition of the contract labour under Section 10 of the Act nor any reference has been made to this effect. The reference made is only whether the petitioner is entitled to be regularized in the

service of the respondents. If the daily wage employees of the respondents are not entitled for regularization on account of having worked on contract for the limited period, the employees of the contractor which contract has been held to be not sham and is valid, the employees of the such contractor shall also not be entitled for regularization.

7. In Gujrat Electricity Board (supra) relied on by the petitioners, it was rather held that the authority to abolish the contract labor under section 10 of the Act is exclusively vested in appropriate Government.

8. The Supreme Court in (2001) 7 SCC 1, Steel Authority of India Ltd. and ors. Vs National Union Waterfront Workers and ors had held that where a workman is hired through a contractor, master and servant relationship exists but where a workman is hired in or in connection with the work of a establishment to produce a given result or the contractor supplies workmen for any work of the establishment, unless, the contractor is mere camouflage, the workmen cannot be treated as an employee of the Principal employer. The Apex Court in Steel Authority of India (supra) on page 55 in para 105 had held as under:

“105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is

intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. **But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10.** *Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment.* Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of the CLRA Act.

9. In the case of the petitioner it has been held that the agreement between the respondents and the contractor is valid and is not a sham document and the contract labor has not been abolished, the petitioner is not entitled for regularization in the service of the respondents. In the circumstances, there is no perversity or manifest error in the award dated 6th November, 2007 so as to entail

interference by this Court under Article 226 of the Constitution of India.

10. The writ petition is, therefore without any merit and it is dismissed.

March 12th, 2008.
'k/Dev'

ANIL KUMAR J.