

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

+ **W.P.(C) 866/2014**

Decided on : 10.09.2014

IN THE MATTER OF

ANIL KUMAR PANCHAL & ORS Petitioners
Through : Mr. K.C.Dubey, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through : Mr. Gursharan Singh, Adv. for R-1.
Mr. Sandeep Prabhakar with Mr. Anil Kumar
and Mr. Vikas Mehta, Advocates
for R-2 & 3/Discom.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. The present petition has been filed by 12 petitioners praying *inter alia* that respondent No.1/Govt. of NCT of Delhi and the respondent No.2 & 3/Discom be directed to bring them on the roll of the Discom, pay them all consequential benefits and provide them all facilities as are available to the regular employees of the respondents/Discom. Further, the petitioners seek continuity of service with seniority and consequential benefits.

2. The petitioners claim that they were appointed and working in different posts with the Delhi Vidyut Board (DVB), when it was

unbundled into five corporate entities in July, 2002. A specific averment has been made in para 1 of the petition to the effect that the petitioners are still working with the respondents/Discom in different posts, as detailed in a tabulated statement placed in the said para. Further, the petitioners claim that the respondent/Discom did not take them on the rolls of the company and failed to pay them wages at par with their co-workers.

3. It is stated in para 5 of the writ petition that the petitioners are technically qualified persons and were working with the erstwhile DVB, but once they came under the respondents No.2 and 3/Discom, they were shifted under intermediaries/contractors without obtaining their consent and such shifting has had a negative effect on their remunerations and other benefits. In para 7 of the writ petition, it has been averred that the aforesaid grievance of the petitioners was raised by the Trade Unions and they have been pursuing the same with the respondents No.2 and 3/Discom, but to no avail. The petitioners claim that they were misguided and had joined hands with contractual workers to vent their grievance, while their cases were altogether different. Pertinently, para 7 is the only para that vaguely refers to some kind of litigation initiated by the petitioners and/or the Trade

Unions of which they are members, without furnishing any details.

4. In the grounds of appeal, the petitioners state that when they were working with the DVB, they had rendered service for more than ten years and that the respondent/Discom cannot change their status without taking their consent, as the same is in violation of Section 9A of the Industrial Disputes Act, 1947 as well as the terms and conditions of the Tripartite Agreement dated 28.10.2000. The petitioners further claim that the action of the respondent/Discom in "shifting" them on the rolls of intermediaries/contractors is illegal and barred by Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970, which prohibits the engagement of contractual workers against the perennial nature of jobs. Based on the aforesaid averments, the petitioners seek directions to the respondents to take them on the rolls of the company as regular employees.

5. It is contended by Mr. Dubey, learned counsel for the petitioners that the aforesaid action on the part of the respondents No.2 and 3/Discom in shifting the petitioners on the rolls of intermediaries/contractors, is contrary to the terms and conditions of the Tripartite Agreement dated 28.10.2000 executed between the Govt. of NCT of Delhi, Delhi Vidyut Board and the representatives of

the Trade Unions of the workers and employees of DVB.

6. Learned counsel for the petitioners has been requested to point out the nature of documents filed by the petitioners to demonstrate that they were employed by the respondent/Discom on different posts as finds mention in the Tabulated Statement, being a part of para 1 of the writ petition. However, he has not been able to point out any document to substantiate the said averment, except for referring to the extract of a note sheet dated 4.3.2003, emanating from the respondent/Discom and enclosed as Annexure-P-3 to the petition. The said note refers to wages bill of 17 personnel on contractual basis, without naming any person, much less the petitioners herein. In other words, counsel for the petitioners has not been able to make good his claim that after the DVB got unbundled in July, 2002, the petitioners who were working with the DVB continued working with the respondent/Discom.

7. Another document referred to by counsel for the petitioners is a Certificate dated 19.6.2002 issued by the respondent/Discom in favour of the petitioner No.2, certifying *inter alia* that the said petitioner had worked in the erstwhile DVB as a Telephone Clerk on contractual/daily-wage basis for a period of six months. The aforesaid document issued

by the respondent/Discom that describes the petitioner No.2 as a Telephone Clerk, working under DVB, is contradicted by the Tabulated Statement forming part of para 1 of the petition, wherein the designation of the very same petitioner has been mentioned as CCA (Customer Care Associate).

8. Mr.Prabhakar, learned counsel for the respondents/Discom opposes the writ petition and submits that it is liable to be dismissed as the petitioners have not approached the Court with clean hands, have deliberately withheld material information and made serious mis-representations. He submits that contrary to what has been stated in the writ petition, there does not exist an employee-employer relationship between the petitioners and the respondents No.2 and 3/Discom and on enquiry by the respondents, it has transpired that the petitioners are engaged by various private contractors/agencies that are providing services to the respondents No.2 and 3/Discom. It is further stated that prior hereto, the DESU Mazdoor Sangh (in short '**the Sangh**'), of which the petitioners were members, had filed a representative writ petition, registered as **WP(C)No.7769/2012** entitled 'DESU Mazdoor Sangh (Regd.) vs. Govt. of NCT of Delhi & Ors.', wherein the names of the petitioners had featured in Annexure-

P-1, enclosed with the said petition. The prayer made in the said petition was for directing the respondents to frame a scheme to bring the workers on the strength of the permanent employees and frame a policy to recruit the required personnel in future. The said writ petition was disposed of, vide order dated 14.12.2012, wherein the court had opined that the State Government should examine the grievances raised by the petitioner/Sangh therein and decide the same after deliberations with the private companies within a period of six months. If aggrieved by the decision taken by the State Government, liberty was granted to the petitioner/Sangh to challenge the same before the appropriate forum. Pertinently, the aforesaid writ petition was filed by Mr. K.C. Dubey, who is appearing for the petitioners herein.

9. Pursuant to the above order, the Sangh had filed a representation before the Additional Secretary, Power, Govt. of NCT of Delhi. The said representation was disposed of by the Govt. of NCT of Delhi, vide order dated 7.6.2013, observing inter alia that on personnel related issues, whether it is related to regular or contractual employees, it is for the respective companies to take a decision at their own level. Subsequently, the Sangh had filed an application in the aforesaid writ petition, through Mr. K.C. Dubey, Advocate stating

inter alia that the petitioners were contractual employees of the respondent/Discom and the latter be restrained from terminating their services and for seeking directions to maintain *status quo*. The aforesaid application(CM APPL. 2995/2013), was dismissed, vide order dated 12.3.2013, with the observation that in view of decision of the Supreme Court the case of Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., reported as **(2006) 4 SCC 1**, contractual employees cannot be regularized and regularization can only be in accordance with the regular recruitment process. It was also clarified that in case the members of the petitioner/Sangh are the employees of the individual contractor, then the ratio of Umadevi's case (supra) would not apply.

10. After four months, in July 2013, Shri Balbir Singh, who was the Secretary of the Sangh, had filed a writ petition, registered as **WP(C)No.6120/2013** entitled 'Shri Balbir Singh vs. Govt. of NCT of Delhi & Ors.', claiming *inter alia* to represent 35000 workers engaged through contractors and seeking directions to the respondents to frame a scheme to bring the workers on the strength of permanent employees and further, to frame a policy to recruit the required personnel in future, apart from issuing a notification prohibiting

contractual employment in the power sector companies. The said writ petition came to be dismissed vide order dated 25.9.2013, with costs of ₹25,000/- imposed on the petitioner. While dismissing the aforesaid petition, it was observed that contractual employees do not fall within the exception carved out in the case of Umadevi (supra), as they are not appointed against sanctioned posts. Further, it was noted that no specific averment was made by the petitioner therein to the effect that any person having worked for ten years prior to the decision of the Supreme Court in the case of Umadevi (supra), would be entitled to fall within the exception carved out in the said decision. It may be noted that Mr. K.C. Dubey, learned counsel for the petitioners herein, was once again engaged by the petitioner in WP(C)No.6120/2013 to conduct his case.

11. Aggrieved by the aforesaid decision, Mr. Balbir Singh had preferred an intra court appeal, registered as **LPA No.161/2014** entitled 'Balbir Singh vs. Govt. of NCT of Delhi', but he sought leave from the Division Bench to withdraw the writ petition with liberty to file a Public Interest Litigation instead. Leave, as prayed for, was granted and the appeal was disposed of. On a query posted to Mr. Dubey, Advocate as to whether Mr. Balbir Singh had subsequently filed a

Public Interest Litigation, the reply is in the negative.

12. The third round of litigation initiated by the Sangh was by filing **WP(C) No.4509/2013** entitled 'DESU Mazoor Sangh (Regd.) vs. Govt. of NCT of Delhi', wherein the Govt. of NCT of Delhi and the private discoms were called upon to formulate a scheme under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and regularize the services of such of the employees who were continuously working for more than ten years in the Discoms. On 19.7.2013, the aforesaid writ petition was withdrawn by the counsel for the petitioner/Sangh with liberty to file a petition under Section 10 of the Industrial Disputes Act, 1947. Subsequently, a petition came to be filed by the Sangh before the Industrial Tribunal, registered as **ID No.273/2013** entitled 'DESU Mazdoor Sangh (Regd.) vs. Govt. of NCT of Delhi & Ors.' and the same is pending adjudication.

13. Counsel for the respondents/Discom states that the previous history of litigations initiated for and on behalf of the petitioners herein and referred to in the counter affidavit, do not find mention in the writ petition except for a passing reference made in para 7 of the writ petition. He submits that now that the Industrial Tribunal is seized of the matter and is adjudicating the dispute with regard to regularization

of the contract labours who have been working under private contractors and the next date of hearing fixed in the said matter is 1.10.2014, the present writ petition ought to be dismissed as the petitioners herein, who are members of the very same Sangh, cannot be permitted to contemporaneously approach the High Court for the same relief.

14. In response, learned counsel for the petitioners contends that there was no need for the petitioners to refer to the previous litigations mentioned by the respondents No.2 and 2/Discom in the counter affidavit as they were not parties there and they cannot be bound down by the decisions taken in the petitions filed by the Sangh. He however admits that the petitioners are members of the Sangh, but claims that the petition that is presently pending before the Industrial Tribunal for adjudication has been instituted by a "breakaway group". Mr. Dubey further clarifies that he was not the counsel for the Sangh in WP(C) No.4509/2013.

15. What is relevant for consideration is that when the petitioners have approached the Court for equitable relief under Article 226 of the Constitution of India, should they be expected to reveal all the material and relevant facts to the Court or not. This Court had

observed in the case of Shri Krishna Jaanmotsav Samiti Punjabi Bagh (Regd.) vs. MCD and Anr. reported as **182 (2011) DLT 155**, that it is settled law that when a party approaches the High Court and seeks to invoke its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a court of law, but also as a court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on behalf of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter. In the aforesaid judgment, reference was made to the decision of the Supreme Court in the case of Prestige Lights Ltd. vs. State Bank of India reported as **(2007) 8 SCC 449** and the judgment of R. vs. Kensington Income Tax Commissioner reported as **(1917) 1 KB 486** that had emphasised the making of full and fair disclosure of all the material facts to the Court. In the case of Prestige Lights (supra), the Supreme Court had held as below:-

"35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

16. In the case of K.D. Sharma vs. SAIL reported as **(2008) 12 SCC 481**, the Supreme Court had observed that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, the petition may be dismissed at the threshold without considering the merits of the claim.

17. In the case at hand, upon a perusal of the averments made by the petitioners in the writ petition and taking into consideration the

averments made by the respondents No.2 and 3/Discom in the counter affidavit, this Court finds that several material facts that were well within the knowledge of the petitioners, have been suppressed. This includes the factum of a history of litigation on the very same issue that was initiated by the *Sangh* of which the petitioners are members. The submission made by the counsel for the petitioners that the previous litigations would not have a bearing on the reliefs sought by the petitioners in the present petition, is found to be devoid of merits. It was incumbent for the petitioners to have placed on record all the relevant facts, including the previous litigations initiated by the Sangh for and on their behalf in a representative capacity and then leave it for the court to decide as to whether it would have any bearing on the reliefs sought in the present petition. This is all the more significant when the common thread in most of the aforesaid litigations happens to be the present counsel for the present petitioners.

18. Even otherwise, from the documents placed on record, learned counsel for the petitioners has not been able to demonstrate that any of the petitioners had continued working with the respondent/Discom in different posts as mentioned in para 1 of the writ petition. When the very foundation of the present petition is so weak and shaky, the

question of this court entertaining the same and calling upon the respondents/Discom to take the petitioners on the roll of the company, does not arise. The stand of the petitioners that the Tripartite Agreement dated 28.10.2000 mandates the respondents/Discom to take over the services of the employees of the DVB, has to be established by demonstrating to the Court through undisputed documents that they were actually employed on regular posts with the erstwhile DVB, which they have miserably failed to do.

19. As noted above, in para 7 of the writ petition, it is the petitioners' own case that they were brought on the rolls of intermediaries/contractors, but allegedly without their consent. If that be the case, then the relief sought by the Sangh in the earlier writ petitions filed by it, calling upon the respondents/Discoms to formulate a scheme under the Contract Labour (Regulation & Abolition) Act, 1970 and regularize the services of the petitioners, is no different from what the petitioners seek now. Clearly, the present petition is nothing but an attempt to serve old wine in new bottles.

20. In view of the aforesaid facts and circumstances, this Court declines to entertain the present petition primarily for the reason that the petitioners have not approached the Court with clean hands and

have deliberately withheld material information. They have deliberately refrained from mentioning the earlier litigation initiated by the Sangh (of which they are members), on the very same issue and failed to state that they had faced adverse orders therein. This is apart from the fact that the petitioners have made contradictory statements about the status of their engagement with the respondent/Discom, without being able to substantiate their stand with relevant documents. Not to be overlooked is the additional fact of a petition having been filed by the Sangh under Section 10 of the Industrial Dispute Act, that is pending adjudication before the Industrial Tribunal. In the given facts, the present petition can only be treated as an attempt on the part of the petitioners to indulge in forum hunting, which ought to be deprecated in strong terms.

21. As a result, the writ petition is dismissed with costs of ₹10,000/- imposed on the petitioners. The respondent/Discom shall be entitled to recover the said costs from the petitioners, in accordance with law.

(HIMA KOHLI)
JUDGE

SEPTEMBER 10, 2014
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