

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9711 OF 2014

Uttar Pradesh Rajkiya Nirman
Nigam Ltd.

.....Petitioner

: V/S :

Yogendra Singh and Ors.

.....Respondents

* * * * *

Mr. A.K. Jalisatgi with Mr. T.R. Yadav, Advocate for the petitioner.
Mr. Neel Helekar i/by. Ms. Anjali Helekar, Advocate for respondents
no.1 to 15.

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Coram :- Smt. R.P. SondurBaldota, J.

10th JUNE, 2015.

P.C. :-

1). This petition challenges the order dated 2nd May, 2014 by which the Industrial Court allowed the reference made to it by the Commissioner of Labour, Mumbai for adjudication of industrial dispute between the petitioner and the respondents. The demand made in the schedule to the order of reference was for absorption of the respondents in permanent service of the petitioner with effect from the date of appointment shown in the Annexure to the reference order. The Industrial Court, by the impugned order has directed the petitioner to

absorb the respondents in its permanent service and in the posts or positions stated in the annexure to the statement of claim with further direction that it shall extend to all the respondents the wages and benefits of permanent employees with effect from 1st January, 2003.

2). The petitioner is a company registered under the Indian Companies Act and is an undertaking of the Government of Uttar Pradesh. It carries on business of construction of buildings. Its business activities are undertaken all over the country. In December, 1989 the petitioner was awarded the contract for construction of Sub Regional Office (ESIC-SRO) at Pune of Employees State Insurance Corporation – and 4 ESIC hospitals at Pune, Chinchwad and Kolhapur. The work of construction of SRO Complex at Pune started in the year 1991 and that of hospitals at Chinchwad and other places started in the year 1994. After completion of the work of construction, the petitioner was maintaining the buildings constructed by it at Pune. The petitioner, however, claims that it had engaged an independent contractor by name M/s. A.K. Nath, Mumbai for the maintenance service.

3). The respondents in the statement of claim alleged that they had been working with the petitioner on the assignments mentioned in Annexure-A to the statement of claim from the dates mentioned thereon. They contend that the petitioner has been engaged in building

construction since last several years and has been constructing and maintaining buildings for ESIC Hospitals and other premises for ESIC at Pune and Kolhapur. The petitioner is alleged to have adopted malpractices by continuing the respondents in employment for several years without offering permanency benefits to them. The respondents have been working continuously with the petitioner since the dates of their respective joining on various posts and they have completed 240 days of work in every year for them. Therefore, according to the respondents, it was the duty of the petitioner to make their services permanent on completion of 240 days.

4). In their written statement, the petitioner neither disputed the designations held by the respondents nor the dates of joining claimed by them. It merely contended that none of the respondents were the direct employees and that they were the employees of the contractors. The petitioner did not name the contractor whose employees the respondents were alleged to be. It also did not state details of the employment of the respondents with the Contractor. The Industrial Tribunal, accordingly made note of the facts and held that the petitioner has failed to establish that there was no relationship of employer and employee between it and the respondents and that the respondents are infact employees of the petitioner. It then considered the length of

service of the respondents with the petitioner and directed the petitioner to grant permanency to the respondents.

5). In the challenge to the order, Mr. Jalisatgi, the learned Advocate appearing for the petitioner submits that the Industrial Tribunal under no circumstances could have granted the benefit of permanency to the respondents without there being any specific pleading by the respondents to the right of permanency in the complaint. He points out that the Tribunal at para-21 of the impugned order, records that the petitioner being engaged in the activities of buildings and designs, Model Standing Orders are applicable and under the Model Standing Orders, the respondents would be required to establish working of 240 days in a year in view of Clause-4(c) thereof. Mr. Jalisatgi, submits that the question of applicability of Model Standing Order would be a mixed question of law and fact and unless the same is specifically pleaded in the complaint and subsequently established by the necessary evidence, the Tribunal could not have held that the Model Standing Orders are applicable to the petitioner. It is also his argument that the work undertaken by the petitioner at Pune was a specific work of construction and at that place the persons employed by the petitioner were not more than 50 as required under the Model Standing Orders. Therefore, the petitioner could not have been treated by the Tribunal as

an “Establishment”. It is not even the case of the petitioner that as a Company it does not employ more than 50 employees. Merely because it undertakes the construction activity at different places, the temporary activity at any place of construction cannot be treated independent of the petitioner. It is only the business activity of the petitioner at the particular place. Therefore, there can be no doubt about the applicability of the Model Standing Order. The respondents have specifically pleaded in the statement of claim about the completion of work of construction of 240 days which would satisfy the requirement of Clause 4(c) of Model Standing Orders.

6). Mr. Jalisatgi then seeks to draw support from the decisions of the Apex Court in **Hindustan Aeronautics Ltd Versus. Dan Bahadur Singh and Others, reported in (2007) 6 Supreme Court Cases page 207** and **Mahendra L. Jain and Others Versus. Indore Development Authority and Others reported in (2005) 1 Supreme Court Cases page 639**. He relies upon para-18 of Hindustan Aeronautics Ltd (supra) decision to submit that, completion of 240 days in a year by itself, does not confer right to regularisation under the Industrial Disputes Act. He submits that, there is no right vested in any daily wager to seek regularisation. Regularisation can only be done in accordance with the rules and not dehors the rules. So in the absence of establishment of the

Model Standing Orders, the respondents could not have succeeded in the reference. Mr. Helekar, the learned Advocate appearing for the respondents, however, points out from paras-19 of the decision that the claim made in the decision to regularisation, was based on the settlement arrived at between the parties and therefore any other observation as regards the right of regularisation cannot be treated as the ratio of the decision.

7). As regards *Mahendra L. Jain's* case (supra), no case had been made out by the employees in their statement of claim that they became permanent employees in terms of any provision of law or rules. Hence, the Apex Court denied the benefits of permanency. The decision is clearly distinguishable on facts. The respondents herein have clearly made claim of completion of 240 days in a year for being granted permanency in the employment. Considering the nature of the claim and the very narrow defence taken by the petitioner that the respondents are not the direct employees of the petitioner. I find no infirmity in the impugned order. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)