

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 16541 of 2006 (T)

PETITIONER(S):

**THE GENERAL MANAGER, CARBORUNDUM,
CARBORUNDUM UNIVERSAL LTD., KORATTY, TRICHUR DIST.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.BENNY P. THOMAS
SRI.K.JOHN MATHAI**

RESPONDENT(S):

- 1. KERALA STATE,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION (E) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 1.**
- 2. THE SECRETARY,
STATE ADVISORY CONTRACT LABOUR BOARD, KARAMANA,
THIRUVANANTHAPURAM - 695 002.**
- 3. THE SECRETARY,
CARBORUNDUM UNIVERSAL EMPLOYEES UNION, KORATTY,
THRISSUR - 680 308.**

*** ADDITIONAL R4 TO R8 IMPLEADED.**

- 4. K.A.DEVASSY, SECURITY SUPERVISOR,
CARBORUNDUM UNIVERSAL LTD., KORATTY.**
- 5. C.T.PAILY SECURITY GUARD,
CARBORUNDUM UNIVERSAL LTD., KORATTY.**
- 6. A.K.SANKARAN, SECURITY GUARD,
CARBORUNDUM UNIVERSAL LTD., KORATTY.**
- 7. M.S.GIRISHKUMAR, SECURITY GUARD,
CARBORUNDUM UNIVERSAL LTD., KORATTY.**

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8. DAVIS K. VARGHESE, SECURITY GUARD,
CARBORUNDUM UNIVERSAL LTD., KORATTY.
* ADDITIONAL R4 TO R8 IMPEADED AS PER ORDER
DTD.13.7.2006 IN IA.9552/2006.

R1 TO R3 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R4 TO R8 BY ADV. SRI.P.RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: PHOTOCOPY OF THE AGREEMENT DTD.31.1.2001.

**EXT.P2: PHOTOCOPY OF THE REPRESENTATION DTD.11.8.1990 TO THE LABOUR
COMMISSIONER & LABOUR SECRETARY.**

**EXT.P2(a): PHOTOCOPY OF THE LETTER DTD.23.11.1992 TO THE CHAIRMAN OF THE
SUB COMMITTEE.**

EXT.P3: PHOTOCOPY OF THE NOTIFICATION NO. G.O. (RT)1072/94/LBR DTD.5.5.1994.

EXT.P4: PHOTOCOPY OF THE JUDGMENT IN OP NO.7951/94 DTD.2.3.1998.

EXT.P5: PHOTOCOPY OF THE JUDGMENT DTD. 17.11.2003 IN WA.NO.1259/1998.

EXT.P6: PHOTOCOPY OF THE ORDER GO (RT) NO.1998/2004/LBR DTD.28.7.2004.

EXT.P7: PHOTOCOPY OF THE JUDGMENT IN WP(C) NO.14674/2005 DTD.10.6.2005.

**EXT.P8: PHOTOCOPY OF THE NOTIFICATION VIDE G.O. (RT)NO.1054/LBR/2006
DTD.10.5.2006.**

EXT.P9: PHOTOCOPY OF THE G.O. (RT) NO. 1136/06/LBR DTD.16.5.2006.

EXT.P10: PHOTOCOPY OF THE LETTER DTD.18.1.2006 TO THE 1ST RESPONDENT.

EXT.P11: PHOTOCOPY OF THE COPY OF THE STATEMENT DTD.9.3.2004.

EXT.P12: PHOTOCOPY OF THE LETTER DTD.29.12.2004.

EXT.P13: PHOTOCOPY OF THE STATEMENT FILED BY THE 1ST RESPONDENT.

EXT.P14: PHOTOCOPY OF THE LETTER NO.E-852/98 DTD.20.2.2004.

**EXT.P15: PHOTOCOPY OF THE MINUTES OF THE 71ST MEETING OF THE STATE
ADVISORY CONTRACT LABOUR BOARD DTD.12.11.2004.**

EXT.P16: PHOTOCOPY OF THE REPORT OF THE SUB COMMITTEE DTD.10.12.1993.

**EXT.P17: PHOTOCOPY OF THE MINUTES OF THE 70TH MEETING OF THE
BOARD HELD ON 4.5.2004.**

RESPONDENT(S)' EXHIBITS:

**EXT.R4(a): TRUE COPY OF REPRESENTATION DTD.9.3.2004 SUBMITTED BY THE
3RD RESPONDENT.**

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**EXT.R4(b): TRUE COPY OF LETTER DTD.7.3.2005 FROM THE 2ND RESPONDENT TO
THE 1ST RESPONDENT.**

EXT.R4(c): TRUE COPY OF NOTICE DTD.26.12.2000 ISSUED BY THE PETITIONER.

**EXT.R4(d): TRUE COPY OF COMPLAINT DTD.8.6.2005 SUBMITTED BY THESE
RESPONDENTS.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

K.VINOD CHANDRAN, J

W.P.(C).No. 16541 of 2006

Dated 5th February, 2015

JUDGMENT

The petitioner is a Company which has two units at Koratty and Edappally. The petitioner Management had entered into a contract for execution of certain works, as per Ext.P1. The Union representing such workmen under the contractors, filed complaints before the appropriate Government under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (Act of 1970), as per Exts.P2 and P2(a). A notice was issued by the Government abolishing the contract labour in the following job specifications :

“Raw materials, House keeping,
Furnace, Crushing and Grading
Departments of the Carborundum
Universal Ltd., Silicon Carbide
Plant.”

2. The Management filed a writ petition which was dismissed by Ext.P4. However, in appeal, the matter was remanded for fresh consideration, which is evident from Ext.P5. Subsequently, after consideration, Ext.P6 order was passed abolishing the contract labour in mechanical repairing works and cleaning in breaking area (crushing plant). The same was again challenged in a writ petition, which was remanded by Ext.P7, again for fresh consideration.

3. Eventually the Government came out with Ext.P8 notification. Though the representation was for abolition of contract labour works in the Raw materials, house keeping, Furnace and Crushing and grading department; Government abolished the work in the "house keeping/security system". Further to Ext.P8 notification, Government also issued Ext.P9 order directing regularization of the employees who were employed in "house keeping/security

system)".

4. The learned counsel for the petitioner would in fact, raise two contentions against Ext.P8 notification and Ext.P9 order; that, there is no work categorized as "house keeping(security system)". Both of them are different and a person employed in one of such job description cannot be employed in the other. The Management also has a contention that, going by the provisions of the Act of 1970, there can be no regularization of the contract labour employees as directed by the Government in Ext.P9 which position stands declared by **Steel Authority of India Ltd. and Others v. National Union Waterfront Workers and Others (2001(7) SCC 1).**

5. The learned counsel for the petitioner however, would contend that the contract itself was a sham since, the contractor was an employee

of the Company itself. In any event, it is submitted that only one employee remains in the petitioner/Company as a security personnel, who is said to be employed under a contract; however, payment being made by the Management itself. At least after Ext.P9, there is a regularization effected, is the contention. The workman could have raised a reference under the Industrial Disputes Act, 1947, (for brevity 'the I.D.Act') for regularization, which he was precluded from since there was an order issued by the Government, granting regularization.

6. The contention that, Government has not applied its mind in deciding the issue of abolition of contract labour, is very evident from the fact that the same has been done for the job description : "house keeping(security system)", which, as submitted by the Management, are two entirely different work categorization. In such

circumstance, definitely, Ext.P8 will have to be set aside for reason of the work categorization and the job description being not clear and for inclusion of two separate departments under the very same head.

7. If the issue of contract labour subsists in the establishment, definitely, the Government could look into it. Ext.P8 would hence stand set aside. When Ext.P8 is set aside, Ext.P9 also would have to be set aside.

8. It is to be further noticed that with respect to the challenge against Ext.P9, the binding precedent referred to above would indicate that there can be no regularization of contract labourers and what the Act of 1970 intends is, the abolition of contract labour so as to not perpetrate an assumed illegality insofar as the Management, employing persons under the

contract, thus denying them benefits of a regular employment; where the employment is with respect to - (i) the process or operation of the establishment or other incidental work and (ii) is of perennial nature and (iii) one ordinarily done through regular workman; as specified under sub-section (2) of Section 10.

9. The Act of 1970 as held by the Honourable Supreme Court, does not expressly or by necessary implication provide for automatic absorption of contract labour. On abolition made by a valid notification, there would be no obligation on the establishment hence, to regularize the employees/labourers engaged by the contractor on the work, for which the contract labour stands abolished. In such circumstance, Ext.P9 also would have to be set aside for that additional ground. I do so.

10. As for the one employee, continuing on the basis of Ext.P9, it is to be noticed that the person was continued allegedly under a contract itself, in the security wing of the Management company. The Management is said to have no other contract labour, either in the security department or in the house keeping department, as of now. The continuing employee under the contractor, is said to be the only employee, who has been continued so, by reason of Ext.P9. This Court found that the employee is not entitled to be regularized or continued. However, this Court has also taken into consideration the fact that the said employee was continued for long years under a contract without any break in the service. By Exts.P8 and P9 orders, the employee is said to have been continued allegedly under a contract, since the regularization of employees were directed by the Government. In such circumstance, it is only proper that the employee be given adequate

compensation, which he would have been otherwise entitled to, under the ID Act. The employee by name, David, shall be given the benefits of gratuity and provident Fund, computing the entire service he has rendered, in the establishment, *de hors* the fact that the petitioner was employed under a contract, on the basis of the last pay drawn, as on the end of this month.

With the above rider, the writ petition would stand allowed setting aside Exts.P8 and P9, but reserving liberty to the Government to consider the matter afresh, if so advised. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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