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

Date of Decision: November 05, 2015

(i) + **W.P.(C) 1961/2001**

M/S NATIONAL PROJECTS CONSTRUCTION Petitioner

Through: Mr. Paritosh Budhiraja & and
Mr. Arun Vashista, Advocates

versus

P.O., INDUSTRIAL TRIBUNAL & ORS. Respondents

Through: Mr. Vijay Sharma, Advocate

(ii) + **W.P.(C) 1962/2001**

M/S NATIONAL PROJECT CONSTRUCTIONPetitioner

Through: Mr. Paritosh Budhiraja and
Mr. Arun Vashista, Advocates

versus

P.O., INDUSTRIAL TRIBUNAL & ORS. Respondents

Through: Mr. Vijay Sharma, Advocate

(iii) + **W.P.(C) 2207/2001**

M/S NATIONAL PROJECTS CONSTRUCTION Petitioner

Through: Mr. Paritosh Budhiraja and
Mr. Arun Vashista, Advocates

versus

P.O., INDUSTRIAL TRIBUNAL & ORS. Respondents

Through: Mr. Vijay Sharma, Advocate

(iv) + **W.P.(C) 2212/2001**

M/S NATIONAL PROJECTS CONSTRUCTION Petitioner

Through: Mr. Paritosh Budhiraja and
Mr. Arun Vashista, Advocates

versus

VIJAYKUMAR AGGARWAL Respondent

Through: Mr. Vijay Sharma, Advocate

(v) + **W.P.(C) 2213/2001**

M/S NATIONAL PROJECTS CONSTRUCTIONPetitioner

Through: Mr. Paritosh Budhiraja and
Mr. Arun Vashista, Advocates

versus

P.O., INDUSTRIAL TRIBUNAL & ORS. Respondents

Through: Mr. Vijay Sharma, Advocate

(vi) + **W.P.(C) 2216/2001**

M/S NATIONAL PROJECTS CONSTRUCTION Petitioner

Through: Mr. Paritosh Budhiraja and
Mr. Arun Vashista, Advocates

versus

P.O., INDUSTRIAL TRIBUNAL & ORS. Respondents

Through: Mr. Vijay Sharma, Advocate

(vii) + **W.P.(C) 2277/2001**

M/S NATIONAL PROJECTS CONSTRUCTION Petitioner

Through: Mr. Paritosh Budhiraja and

Mr. Arun Vashista, Advocates

versus

P.O., INDUSTRIAL TRIBUNAL & ORS. Respondents

Through: Mr. Vijay Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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Petitioner is a *Public Sector Undertaking (PSU)* (wholly owned by the Union of India and Ministry of Water Resources), who had placed two work orders with *M/s. S.S. Placement Services (Regd.)* for the purpose of cleaning, maintaining, upkeeping, etc. vide the work order of 24th February, 1986 for the Registered/Corporate Office at Raja House, 30-31, Nehru Place, Sant Nagar and Office at Transit Camp At S-439, Greater Kailash-II, New Delhi. Respondent workmen herein are the employees of *M/s. S.S. Placement Services (Regd.)*, who had worked with petitioner at their office at Nehru Place at G.K.-II and after doing the cleaning work, etc., for about three years, respondent-workmen herein had sought regularization by raising an industrial dispute.

During the pendency of the industrial dispute, petitioner had not renewed the yearly work orders for the purposes of cleaning, maintenance, etc., because the entire corporate office of petitioner at Nehru Place and Transit Camp had to be vacated and the entire corporate office of petitioner had shifted to Faridabad in January, 1994. The transit camp in G.K.-II was also closed. The corporate office in Nehru Place comprised of four floors and with the shifting of the Corporate Office and

the Transit Camp, there is no requirement of engaging workers for the purpose of cleaning, etc., and so, the work orders were not renewed thereby resulting in termination of service of respondents-workmen. The termination of service of respondents-workmen was challenged by filing a complaint under Section 33-A of the *Industrial Disputes Act* and the trial court vide impugned Award has decided the Reference seeking regularization as well as complaint under Section 33-A of the *Industrial Disputes Act*.

The twin issues which are required to be considered in these petitions are as under: -

- *Whether relationship of employer and employee existed between the parties?*
- *Whether the workmen concerned named in the Reference were performing perennial nature of work?*

On the issue of existence of employer-employee relationship, the finding returned in the impugned Award is as under: -

“In the case before us, the workmen concerned were admittedly employed through the contractor to carry out the jobs of cleaning, watch and ward and doing other misc. works, whereas the workmen concerned have claimed and succeeded in establishing that some of them were also doing supervisory as well as clerical jobs and there existed no genuine contract labour system prevailing with the management. It is not even averred that the respondents No.2 or 3 had any licence to engage contract labour, that the management no.1 was registered as principal employer. Therefore, the plea of the management no.1 that the workmen concerned were not their employees is devoid of any merit. Hence, considering the case

of the parties in the light of the law as laid down in the decisions cited above, I come to the irresistible conclusion that there existed relationship of employer and employee between management no.1 and the workmen concerned. I hold accordingly. All the three issues thus stand decided against the management no.1.”

On the afore-noted second issue, the finding returned, while reproducing the submissions of petitioner-Management, was that the work performed by respondent-workmen was of perennial nature.

Petitioner-Management’s submission, as noticed in the impugned Award, is as under: -

“The work orders which were placed on M/s. S.S. Placement for the purpose of cleaning, maintaining, upkeep etc. vide work orders No.5000002A dt. 24.2.86 exhibit MW1/A and MW/B were only for the registered office/Corporate Office at Raja House, 30-31, Nehru Place, Sant Nagar and office at Transit Camp at S-439, Greater Kailash-II. The entire Corporate Office has been vacated and shifted to plot no.67-68, Sector-25, Faridabad (Har) on 14.1.1994 and consequent thereto the transit Camp at S-439, Greater Kailash-II, was also closed and possession thereof has been surrendered to the landlord. After the shifting of the Corporate office which comprised of Four floors from Raja House, Nehru Place, Sant Nagar, New Delhi and the surrender of the transit Camp at Greater Kailash Part-II, there was and there has been no requirement of the continuance of the work orders for the aforesaid building. The Registered Office of the Company alone exists in Raja House, 30-31, Nehru Place, New Delhi and is housed in only two rooms and that has to be kept as a statutory formality. The house keeping/ Security work as Raja House, ever since

then is being manned by the NPC's own employees. Even the Security, Cleaning, upkeep of the Corporate office at 67-68, Sector-25, Faridabad is being manned by the NPCC's own employees."

At the hearing, learned counsel for petitioner in the above captioned seven petitions submitted that the common impugned Award of 31st January, 2000 is assailed in these petitions on identical grounds, therefore, these petitions were heard together and by this common judgment, they are being disposed of.

Learned counsel for petitioner assailed the impugned Award on the ground that there existed no employer-employee relationship between the parties as respondent-workmen were employed by the contractor, who had taken the work orders in question. Attention of this Court was drawn by learned counsel for petitioner to paragraph No. 37 of the impugned Award to point out that the learned Tribunal itself has noted that the contract labour was engaged by petitioner, but had erroneously concluded that the contract labour system prevailing with the Management of petitioner was not genuine. It was pointed out that due to work requirement at the Nehru Place Office and the Transit Camp, work orders were placed and the decisions relied upon by the learned Tribunal in the impugned Award are of no assistance because in a later Constitutional Bench decision of the Apex Court in *Steel Authority of India Ltd. & Ors. Etc. Etc. v. National Union Water Front Workers & Ors. Etc.Etc.* 2001 (5) SCALE 626, it has been declared that a Notification under Section 10 of the *Contract Labour (Regulation and Abolition) Act, 1970* (hereinafter referred to as *CLRA*) has to be issued prohibiting employment of contract

labour and no such Notification was ever issued in respect of petitioners and even if a Notification under Section 10 of *CLRA* is issued, but it does not mean that there is an automatic absorption of contract labour on issuance of such Notification.

It was vehemently asserted by learned counsel for petitioner that the impugned Award is erroneous on the face of it as there was no basis for the learned Tribunal to come to a conclusion that the work orders in question were not genuine and in instant case, it cannot be said that the work orders were camouflaged to evade compliance of beneficial legislation to deprive the workers to avail benefit thereof, as Employees Provident Fund's benefits were being extended to the contract labour by the contractor and so, there is no basis to conclude that the work orders in question were not genuine. Thus, it was submitted that the finding on the crucial issue of there being relationship of employer-employee deserves to be set aside and it ought to be held that there is no relationship of employer-employee relationship of petitioner with respondent-workmen.

Attention of this Court was drawn by learned counsel for petitioner to the deposition of petitioner's witness-*S.C. Kalra (MW-1)* to point out that he had specifically stated in his evidence that no wages were being paid by petitioner to respondents-workmen and no supervisory work was being got done from respondents-workmen. It was pointed out that the evidence of petitioner's witness- *S.C. Kalra (MW-1)* remains unchallenged and it was pointed out that it is not even the case of respondents-workmen that any fresh employment was given to do the work at the Corporate Office of petitioner at Faridabad or at the Registered Office in Delhi.

Regarding the perennial nature of work, it was submitted that the finding returned in the impugned Award is clearly faulty because it was not disputed that with the shifting of the entire Corporate Office of petitioner from Nehru Place/G.K.-II to Faridabad, there was no work left for respondent-workmen. It was pointed out that after non-renewal of the work orders, no workman was appointed/engaged by petitioner in Registered Office in Delhi. It was asserted that it was the statutory requirement of petitioner to have a Registered office at Delhi and the said office was maintained by petitioner's own employees. It was pointed out that registered office at Delhi, after shifting Corporate Office to Faridabad, comprised of two rooms only and the security, cleaning, upkeeping of the Corporate Office to Faridabad as well as in Delhi was done by petitioner's own employees. Thus, it was submitted that the finding on the afore-noted two issues also deserves to be set aside and the impugned Award deserves to be quashed.

In support of the above submissions, reliance was placed upon decisions in *Goa Sampling Employees' Association Vs. General Superintendence Co. of India Pvt. Ltd. & ors.* AIR 1985 SC 357; *Steel Authority of India Ltd. & ors. etc. etc. Vs. National Union Water Front Workers & ors. etc. etc.* 2001 (5) SCALE 626; *Hindustan Aeronautics Ltd. & anr. Vs. Hindustan Aero Canteen K. Sangh & ors.* 2002 (5) SCALE 78 & *International Airport Authority of India Vs. International Air Cargo Workers' Union & anr.* AIR 2009 SC 3063.

On behalf of respondent-workmen, it was submitted that the impugned Award suffers from no illegality or infirmity and respondent-workmen ought to be given the reinstatement and that the right of

respondent-workmen to seek regularization cannot be defeated by the subsequent events. It was maintained by learned counsel for respondents-workmen that although the office of petitioner has shifted, but the nature of work remains perennial and so, petitioner ought to be directed to reinstate respondents-workmen.

After having heard both the sides and on perusal of the impugned Award, material on record and the decisions cited, I find that in view of dictum of Apex Court in *Steel Authority of India Ltd. (supra)* to prohibit the employment of contract labour, a Notification under Section 10 of CLRA is required to be issued and in the case of petitioner, no such Notification was ever issued. Thus, it is clear that petitioner is not prohibited from employing contract labour and from the unchallenged evidence of petitioner's witness- *S.C. Kalra (MW-1)*, it becomes quite evident that there was no employer-employee relationship between the parties and this by itself renders impugned Award unsustainable.

The impugned finding of engaging respondent-workmen on contract basis being not genuine, is not supported by evidence on record. Learned Tribunal was not justified in returning such a finding as the Employees Provident Fund benefits were being extended to respondent-workmen and they were being paid wages by the Contractor. Pertinently, wages were not paid to respondent-workmen by petitioner. Respondent-workmen were employed through Contractor by means of work orders by petitioner's office and with the shifting of the entire Corporate Office of petitioner from Delhi to Faridabad, there was no requirement of employing labour on contract basis and so, the work orders were rightly not renewed by petitioner. This part of evidence led on behalf of

petitioners remains unchallenged. Thus, finding of there being perennial nature of work is unsustainable on the face of it.

As already noted above, evidence of petitioner of not employing any person to do the work of security, cleaning, upkeep of the Corporate Office in Faridabad and Registered Office in Delhi after shifting of the Corporate Office, remains unchallenged. The claim of respondent-workmen seeking regularization cannot be entertained for the reason that the relationship of employer-employee never existed between the parties. Thus, impugned order is rendered unsustainable and is hereby set aside.

The above captioned petitions are accordingly allowed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

NOVEMBER 05, 2015
s/r