

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.20733 of 2010

ORDER:

Petitioners 2 to 13 were employed by Sri V. Sambi Reddy who was given the contract for lifting fly ash, from the Kothagudem Thermal Power Station, for a period of one year. On the ground that the respondents had sought to change the contractor, and thereby replace them with some others, petitioners 2 to 13 invoked the jurisdiction of this Court, and are continuing in service pursuant to the interim order passed earlier. Curiously the Contractor, who had engaged the services of petitioners 2 to 13, has not even been arrayed as a respondent in the Writ Petition. Reliance is placed by Sri S. Chandraiah, Learned Counsel for the petitioners, on the observations of this Court, in **K. Ravinder v. A.P. Generation Corporation Ltd, Hyderabad**¹, in support of his submission that, even if the Kothagudem Thermal Power Station were to change the contractor, petitioners 2 to 13 were required to be continued in service.

While certain obligations are placed on the principal employer under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, neither can a mandamus be issued for regularization of the services of the employees of the contractor nor can a direction be issued that the very same employees, whose services were engaged by the earlier contractor and whose contract was subsequently terminated, should be continued even if the work is entrusted to another contractor. All that the Contract Labour

¹ 2000 (6) ALD 59

(Regulation and Abolition) Act, 1970 provides is for the abolition of contract labour in certain employment.

The Contract Labour (Regulation & Abolition) Act, 1970 is a complete code by itself. It not only provides for regulation of contract labour but also for its abolition. (**Steel Authority of India Ltd. v. Union of India**²). Section 10 of the said Act does not imply any requirement of automatic absorption of contract labour by the principal employer in the establishment concerned, even on the issuance of a notification by the appropriate Government prohibiting employment of contract labour in a given establishment. (**SAIL v. National Union Waterfront Workers**³).

The existence of relationship of employer-employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a Writ Court would not go into such questions. Neither the Labour Court nor the Writ court would determine the question whether contract labour should be abolished, as these issues fall within the exclusive domain of the appropriate government under Section 10 of the said Act. (**Steel Authority of India Ltd**²). If the petitioners seek the relief of absorption, they should approach the Industrial Tribunal/Labour Court, and establish that the contract labour system was only a ruse/camouflage to avoid labour law benefits to them. The High Court would not, in the exercise of its jurisdiction under Article 226, direct their absorption on the ground that the work, for which they were engaged as contract labour, is perennial in nature. (**Steel**

² (2006) 12 SCC 233

³ (2001) 7 SCC 1

Authority of India Ltd²; A.P. SRTC v. G. Srinivas Reddy⁴). The only remedy the petitioners have is to approach the Industrial Tribunal seeking a declaration that the contract labour system, under which they were employed, was a camouflage and they were, in fact, direct employees of the Corporation. (**Steel Authority of India Ltd²; State of Karnataka v. KGSD Canteen Employees' Welfare Association⁵**).

As it does appear that there is neither privity of contract, nor an employer – employee relationship, between petitioners 2 to 13 on the one hand and the Kothagudem Thermal Power Station on the other, any direction sought by them to declare the action of the respondents in replacing them with other contract labour is misconceived. As the Kothagudem Thermal Power Station has not employed them, the grievance of petitioners 2 to 13, regarding termination of their services, can only be agitated against their employer Sri V. Sambi Reddy who has not even been arrayed as a respondent in this Writ Petition. In any event such disputes, whether termination of their services is a mere camouflage, and they were in fact directly employed by the Corporation, can only be examined in an Industrial dispute referred for adjudication to the Industrial Tribunal. In the light of the judgments of the Supreme Court referred to hereinabove, the law declared by a Single Judge of this Court, in **K. Ravinder¹**, is no longer good law and reliance placed thereupon, on behalf of the petitioners, is misplaced. The relief, sought for in this Writ Petition cannot, therefore, be granted.

⁴ (2006) 3 SCC 674

⁵ (2006) 1 SCC 567

Leaving it open to petitioners 2 to 13 to avail such other legal remedies as are available to them in law, the Writ Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions pending, if any, shall also stand closed. No order as to costs.

RAMESH RANGANATHAN, ACJ.

Date:11.11.2016.

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