

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: **12.01.2017**

Delivered on :: **30.01.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE V.PARTHIBAN**

W.P. Nos.33117 to 33119 of 2016

V.Thanga Mani ... W.P.No.33117 of 2016

R.Gopisankar ... W.P.No.33118 of 2016

K.Harisekar ... W.P.No.33119 of 2016

versus

- 1 The Employees State
Insurance Corpn. rep. by The Regional
Director NO.178 Ansari Duraisamy Nagar
100 Feet Road Opp. to RTO Mudaliapet
Puducherry
- 2 The Director Genral
ESI Corporation Headquarters Office C.I.G.
Marg New Delhi 110 002
- 3 The Union of India rep. by
its Secretary Ministry of Labour and
Employment Shram Shakti Bhavan New Delhi
110 001
- 4 Mr.Inbasekaran
Proprietor M/s.Nidhi Labour Contractor No.21
First Main Road Ambal Nagar Puducherry 605
009

5 Central Administrative Tribunal
rep. by its Registrar Chennai

... respondents

Writ Petition in W.P.No.33117 of 2016 filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the proceedings in the file O.A.No.1812 of 2013 resulting in issue of Common order dated 4.11.2015 in O.A.Nos.1812 1816 and 1819 of 2013 together with the Review Proceedings in issue of another common order dated 15.2.2016 in R.A.No.3 of 2016 in O.A.No.1812 of 2013 of the 5th respondent and quash both the proceedings of the 5th respondent as discriminatory illegal arbitrary whimsical unreasonable denial of equality of opportunity non consideration of relevant facts and documents violation of Rule of Law thus in derogation of the fundamental rights guaranteed under article 14 16 and 21 of the constitution of India to the petitioners and consequently (a) direct the 1st and 2nd respondents to reinstate and regularize the services of the petitioner in the cadre of Group D now called as Multi Tasking Skill Person by virtue of having served more than two years and 3 months from 28.8.2006 as on 1.10.2008 and 7 years and 3 months continuous employment as on 30.11.2013 under the subterfuge, sham and comouflage contract between the 1st and 4th respondents which otherwise is a temporary employment under the 1st respondent by virtue of the applicant having been discharging the duties of a regular MTS employee of the 1st respondent in line with the circular no.A-33/11/2007 Esst.II dated 12.01.2011 issued by the 2nd respondent which is also in consonance with Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M.No.40011/6/2002-Estt (C) dated 6 June 2002, by relaxing conditions of age and qualifications required under the recruitment regulations pertaining to Group D/MTS services by conferring all consequential service benefits as deemed fit with effect from 12.1.2011 in relaxation of the recruitment regulations as specified in the said circular dated 12.01.2011 of the 2nd respondent or (b) grant liberty to the petitioner to approach appropriate industrial Tribunal/labour Court of competent jurisdiction for seeking available legal remedy further open to the petitioner against the respondents for violations of the provisions of Contract Labour (regulation & Abolition) Act, 1970, for the purpose of passing appropriate orders on adjudication of the matter.

For petitioner : Mr.A.Irundayam

For Respondents : Mr.C.V.Ramachandramurthy, for R-1 and R-2
Mr.A.Veeramani for R-3
Ms.Lakshmi for R-4

COMMON ORDER

K.K.SASIDHARAN, J.

Introductory:-

The petitioners were engaged by M/s.Nidhi Labour Contractor as contract workers and allotted to the Employee State Insurance Corporation, ("ESI Corporation", for short), Puducherry, to work as Class IV Staff, pursuant to the tender quoted by the said Corporation. Subsequently, E.S.I. Corporation awarded house keeping contract to another contractor M/s.Ex.Servicemen Security and Intelligent Services, Puducherry, and informed the erstwhile contractor M/s.Nidhi Labour Contractor that existing contract has come to an end on 30 November 2013. The petitioners approached the Central Administrative Tribunal by filing O.A.Nos.1812, 1816 and 1819 of 2013, essentially to direct E.S.I. Corporation to regularize their services. The Tribunal dismissed the original applications and the review petitions, filed subsequently. Feeling aggrieved, the contract employees are before this Court.

Brief facts:-

2. The Employees State Insurance Corporation, Puducherry, floated tenders for providing manpower. M/s.Nidhi Labour Contractor, 4th respondent herein, was awarded the contract. The petitioners were

engaged by the contractor and deputed to the E.S.I. Corporation at Puducherry. The petitioners have worked as peons, pursuant to the contract awarded to the independent contractor. The contract was extended periodically. Subsequently, tenders were called for and the contract was awarded to another contractor and the same resulted in closing the contract entered into by the E.S.I. Corporation with M/s.Nidhi Labour Contractor. The petitioners were disengaged by the contractor. The petitioners filed original applications before the Tribunal with a contention that they have served as peons under E.S.I. Corporation and as such, they are eligible for regularization.

3. The Tribunal found that the petitioners were engaged by the contractor only and their entry was not by a transparent process for regular appointment. The Tribunal therefore dismissed the original applications. The review applications filed subsequently were also dismissed.

Submissions:-

4. The learned counsel for the petitioners by placing reliance on certain letters sent by E.S.I. Corporation to M/s.Nidhi Labour Contractor, contended that the contract itself was a camouflage to deny the petitioners' right to claim absorption. According to the learned counsel, the petitioners

have worked as peons against sanctioned posts. There were sufficient number of post of peons and as such, their engagements were against the sanctioned posts. The petitioners having worked for sufficient number of years are entitled to be regularized. According to the learned counsel, the Tribunal proceeded as if the petitioners were engaged by the contractor without understanding the fact that the engagements were direct and the contractor was only an intermediary.

5. The learned counsel for E.S.I. Corporation justified the order passed by the Tribunal. According to the learned counsel, the petitioners were engaged only by the contractor. There was no privity of contract between the petitioners and the E.S.I. Corporation. The petitioners were not engaged by following any kind of selection method. The petitioners are therefore not entitled for regularization.

Discussion:-

6. The E.S.I. Corporation floated tenders for providing hospitality services. Documents available on record indicate that M/s.Nidhi Labour Contractor, 4th respondent in the Writ Petitions, was awarded the contract. The contract was originally to provide services of three peons. Subsequently, two more peons were engaged. The communication dated 1

July 2004 shows that M/s.Nidhi Labour Contractor submitted quotation on 21 June 2004. Quotation was accepted and the manpower contract was extended upto 31 March 2005. Similar extensions were given subsequently on executing a fresh agreement by the contractor. Finally, the contract was awarded to Ex.Servicemen Security and Intelligent Services. The contract given to the fourth respondent came to an end by efflux of time. Closure of the contract is found in the communication dated 25 November 2013, sent by E.S.I. Corporation to M/s.Nidhi Labour Contractor. It is also a matter of record that the petitioners were not engaged after 30 November 2013.

7. The petitioners approached the Tribunal in 2013 with a claim for regularization. According to the petitioners, they were actually engaged by E.S.I. Corporation and the fourth respondent was only an outsourcing agency. In short, it was the contention of the petitioners that it was only to deny them the benefits of regularization, E.S.I. Corporation adopted a novel device of engaging employees through independent contractors.

8. The core question is whether the petitioners, who have been engaged through a contractor, are entitled to be regularized against the sanctioned posts.

9. There is no dispute that initial engagement of the petitioners were

not through a transparent process. There was no recruitment made by E.S.I. Corporation to appoint employees against sanctioned posts. E.S.I. Corporation appointed a contractor to supply manpower. The petitioners were engaged only by the contractor. There was absolutely no privity of contract or employer-employee relationship between ESI Corporation and the petitioners. The contractor entered into an agreement with E.S.I. Corporation. The agreement contained the terms and conditions of contract regarding engagement of personnel. Since the quotation given by the fourth respondent was found to be the lowest, contract was awarded, to supply manpower. Wages were paid by ESI Corporation to the contractor. The contractor in turn paid wages to the petitioners.

10. The contract in question was not a statutory one. It was a regular contract to supply manpower.

11. The petitioners have not produced even a scrap of paper to show that they were engaged only by the E.S.I. Corporation. The argument of the petitioners proceed as if they were engaged by the Corporation through a contractor. There are no materials to support the said plea. In fact, the subsequent contract given to M/s.Exservicemen Security and Intelligent Services, clearly shows that by way of advertisement only, quotations were received by E.S.I. Corporation and ultimately, it was given to the lowest

tenderer.

12. The Hon'ble Supreme Court in ***State of Karnataka and ors. vs. Uma Devi and others, 2006(4) SCC 1***, clearly held that merely because a temporary employee or a casual wage worker worked continuously for more than 240 days in a year, he would not be entitled to be absorbed in regular service or made permanent on the strength of such continuance, if the original appointment was made without following the due process of selection as envisaged by the relevant rules.

13. The view expressed in ***Uma Devi*** was reiterated by the Hon'ble Supreme Court in ***Vice Chancellor, Lucknow University vs. Akhilesh Kumar Khare, 2015(9) Scale 625***.

14. The petitioners have no case that their appointments were made by issuing selection notification by the ESI Corporation. Their engagement was through a contractor. The contract came to an end by efflux of time. Subsequently, on account of the fresh contract given by the ESI Corporation in favour of M/s.Ex.Servicemen Security and Intelligent Services, the petitioners were not engaged. Such being the factual position, the petitioners have no justifiable claim for regularization. The

Central Administrative Tribunal was therefore perfectly correct in dismissing the original applications. We do not find any error or illegality in the order, warranting interference, by exercising the power of judicial review.

15. In the upshot, we dismiss the Writ Petitions. No costs. Consequently, W.M.P.Nos.28637 to 28639 of 2016 are dismissed.

(K.K.SASIDHARAN, J.) (V.PARTHIBAN, J.)

30 January 2017

Index: Yes/no
tar

To

- 1 The Regional Director,
The Employees State Insurance Corpn.
No.178 Ansari Duraisamy Nagar
100 Feet Road Opp. to RTO Mudaliapet
Puducherry
- 2 The Director Genral
ESI Corporation Headquarters Office C.I.G.
Marg New Delhi 110 002
- 3 The Secretary
Ministry of Labour and Employment
Shram Shakti Bhavan
New Delhi 110 001

- 4 The Registrar
The Central Administrative Tribunal
Chennai.

K.K.SASIDHARAN, J.

and

V.PARTHIBAN, J.

(tar)

P.D. Order in

W.P. Nos.33117 to 33119 of 2016

30 .01.2017