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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11th May, 2017

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W.P.(C) 2175/2014 & CM No.40172/2016
SURJEET SHYAMAL

..... Petitioner

Through : Mr.Rakesh Kumar Singh, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr.Kirtiman Singh, Mr.Prateek
Dhanda and Mr.Waize Ali Noor,
Advs. for R-1 to 3
Ms.Raavi Birbal with Mr.Ankit
Parashar, Advs. for R-4

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

1. The writ petitioner seeks direction with respect to enforcement of Section 21 of Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter 'the Act'). He submits that IRCTC – fourth respondent, is engaged in contract labour and for that purpose, it licences agencies – in the present instance, it is known as a contractor. Such contractors are granted licences to employ workmen who in turn work in the establishment of the respondent. The petitioner relies upon provisions of the Act as well as an office memorandum (OM dated 23.01.2013) issued by the Ministry of Labour to say that every contractor is obliged to pay his workmen not

only minimum wages but rate of wages of emoluments equivalent to what he is paid for identical or similar work, but who are hired by the employer on permanent basis. In support of his contention, the petitioner has relied upon a number of documents including queries issued by the Ministry of Labour and Employment and questionnaire based thereon.

2. IRCTC which has filed its reply argues that the petitioner cannot seek reliefs or directions that he is claiming in these proceedings. It argues firstly that the employer-employee relationship subsists and the interface is only to ensure that the contractor complies with the terms.

3. Rule 25(iv) & (v) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (hereinafter 'Rule') obliged a contractor to ensure payment of amounts over and above the minimum wages if such emoluments are enjoyed by those working as permanent employees in the establishment which resorts to contract labour. Learned counsel also highlights the proviso to Rule 25(v)(a) to say that in the event of dispute or disagreement with reference to the amounts paid or the rate, such a disagreement would have to be first adjudicated by the concerned Deputy Chief Labour Commissioner or his nominee or delegate.

4. Counsel for the respondent also submitted that the concept of equal wages cannot be divorced from other conditions such as 'the

kind of qualifications held by the employee, which are relevant in deciding whether the work is equal’.

5. The counsel for the Union of India submits that the OM relied upon by the petitioner was issued to elicit responses from various establishments, and it is not compulsory but only advices as to the correct position which establishments are to follow. It is further submitted that since each successive labour commissioner has a database with respect to all employees, the task of ascertaining whether in fact in a given case the contractor in a establishment has defaulted with respect to his or its obligations in regard to section 21 or Rule 25 is made easier. It is highlighted in this regard that since the disputes relate to specificity with respect to class of employment, amounts paid and the disparity between the wages having regard to the type of work, reliefs claimed in the present case may not be appropriate and instead the petitioner should agitate the dispute before the concerned Labour Commissioner.

6. During the hearing, counsel for the petitioner has relied upon the decision of the Supreme Court in *BHEL Workers Association, Hardwar & Ors. V. Union of India & Ors.* (1985) 1 SCC 630. The Court had observed as follows :-

“Similarly Rule 25 (ii) (v) (b) provides that in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Chief Labour Commissioner (Central). While determining the wage rates, holidays, hours of work and other conditions of

service under Rule 25 (ii) (v) (b) the Chief Labour Commissioner is required to have regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments. There is no dispute before us that the Payment of Wages Act applies as much to contract labour as to labour directly employed by the principal employer of the establishment.

6. *Thus we see that no invidious distinction can be made against contract labour. Contract labour is entitled to the same wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central). It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under sec. 10 of the contract Labour (Regulation and Abolition) Act, 1970. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under sec. 10 of the Act. Similarly the question whether the work done by Contract labour is the same or similar work as that done by the workmen directly employed by the principal employer of any establishment is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25 (ii) (v) (a). In these circumstances, we have no option but to dismiss both the writ petitions but with a direction to the Central Government to consider whether the employment of contract labour should not be prohibited under sec.10*

of the Act in any process, operation or other work of the BHEL, Hardwar. There will also be a direction to the Chief Labour Commissioner to enquire into the question whether the work done by the workmen employed by the contractors is the same type of work as that done by the workmen directly employed by the principal employer in the BHEL, Hardwar.”

7. The petitioner's counsel on the other hand relied upon *Hindustan Steel Works Construction Ltd. V. Commissioner of Labour & Ors.* (1996) 10 SCC 599 which had highlighted that in the event of a dispute the concerned forum to adjudicate it would be as under Rule 25 of the Act.

8. This Court is of the opinion that although the petitioner is correct to the extent in contending that contract employees have an enforceable right under Section 21 which effectively embodies the principle of equality under Article 14 – by way of a statutory principle, it also encapsulates the Directive Principle of equal pay for equal work. At the same time, the appropriate forum to agitate this dispute would be the concerned Deputy Labour Commissioner or his nominee, in such a dispute the claimant/ petitioner would necessarily have to contend (a) the kind of wages given by the contractor as opposed to what is enjoyed by way of higher emoluments to a permanent employee or someone working in the permanent establishment and (b) that the work is of the same type. This exercise is factual and the result naturally would follow. Having regard to these considerations, the Court is of the opinion that the directions

given in *BHEL workers* (supra) are applicable to the circumstance of the case. Accordingly, the petitioner shall approach the Deputy Labour Commissioner or Deputy Chief Labour Commissioner/his nominee with relevant particulars under Rule 25(v)(a). The said official would consider the matter and after ascertaining through appropriate proceedings of facts, from all the parties including the contractor and the permanent establishment, render findings in accordance with law, within three months of the filing of such a claim.

9. Needless to say that the rights and contentions of the parties are kept open.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

MAY 11, 2017

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