

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.6096 OF 2001

ORDER:

Petitioners, who are 15 in number and working as contract labour in VST Industries Limited, filed this Writ Petition seeking to issue a Writ of Mandamus declaring the action of the respondents in not taking any steps on the basis of the recommendations of the A.P. State Advisory Contract Labour Board (for short 'the Board') as communicated in Lr.No.Q2/38002/92 dated 12.07.1993 as illegal, arbitrary and consequently direct the respondents to take a decision on the recommendations of the Board in all Industries in the State of A.P. and regularization of contract labour in M/s.VST Industries Limited.

The case of the petitioners is that they are working as contract labour in M/s.Vazir Sultan Tobacco Ltd., Azamabad, Hyderabad, the second respondent herein, however without any contractor. One of their co-workers was projected as a Contractor and the petitioners were shown as contract labour supplied by said co-worker. Since 1987 they are working in Shipping Department of the second respondent and their names are reflected in the attendance register. ESI and PF contributions were also being deducted. As per the Compromise Agreement entered between the Hyderabad Industrial Contract Workers' Union and the second respondent, services of seven contract labour working in Shipping department of the second respondent were regularized, who are juniors to the petitioners herein. The Board in its third meeting convened on 06.07.1993 held that after visiting various industries in the State including M/s.VST Industries Ltd and after observing

the work of loading and unloading and also after finding that it is perennial in nature, concluded that the system of Contract Labour in loading and unloading operations be abolished and that the contract labour of loading and unloading in M/s.VST Industries Ltd. are discharging similar duties to that of their regular workmen and thereby it was unanimously resolved to recommend that the services of the contract labour should be regularized. Accordingly, letter dated 06.07.1993 was addressed by the Board to the first respondent along with minutes of the meeting held on 06.07.1993. However, the first respondent had not taken any action. Hence, alleging that the inaction on the part of the respondents deprived them of all statutory benefits under the provisions of various Labour Legislations, the present Writ Petition came to be filed by the petitioners.

Sri S.Ashok Anand Kumar, learned counsel for the petitioners, would contend that non-consideration of the recommendations of the Board to abolish contract labour system in the second respondent Industry and for regularization of the services of the contract labour, is in utter violation of the provisions of Section 10 of the Contract Labour (Regularization and Abolition) Act, 1970 (for short, 'Act, 1970') and petitioners are entitled for regularization.

Per contra, learned Assistant Government Pleader while reiterating the averments of the counter would contend that the functions of the Board are recommendatory in nature and the recommendations of the Board would be examined by the Government and in cases where Government comes to a conclusion that the recommendations satisfy conditions stipulated

in clause (2) of Section 10 the Act, 1970, necessary action would be initiated for prohibition. He would further contend that the loading and unloading activities are generally being carried out through contract labour only. The Government was of the opinion that prohibition of employment of contract labour in loading and unloading operations in M/s.VST Industries is not necessary. Hence, the Government did not act upon the recommendations of the Board for prohibition of contract labour in loading and unloading operations in M/s.VST Industries Ltd.

Sri Challa Gunaranjan, learned counsel appearing for the second respondent M/s.VST Industries Ltd., would contend that the petitioners' services were utilized as contract labour through contractor as per the provisions of Act, 1970. Services of the petitioners were engaged in shipping establishment, which is not perennial in nature. As and when the work is available, the services of the petitioners are utilized and the same could not be abolished under the provisions of Act, 1970. The recommendations of the Board are not binding on the first respondent-Government and they are only recommendatory in nature. He would bring to the notice of this Court that the Amended Act 10 of 2003 was brought in and came into force w.e.f.22.08.2003 whereby Sections 3 to 5 of Chapter II of the Principal Act relating to the Board are omitted and the State Advisory Board was cancelled and in its place the State Government/appropriate Government was empowered to appoint a designated authority to advise them on the question 'whether any activity of a given establishment is a core activity or otherwise'. He would further contend that this Court by exercising power under

Article 226 of the Constitution of India cannot direct the Government to abolish the Contract Labour in the second respondent Industry and regularize the services of the petitioners. Hence, the Writ Petition is misconceived and liable to be dismissed.

Section 10 of the Andhra Pradesh (amended) Act No.10 of 2003 reads as follows:

10. Prohibition of employment of Contract Labour:- (1) Notwithstanding anything contained in this Act, employment of Contract Labour in Core Activities of any establishment is prohibited:

Provided that the Principal employer may engage Contract Labour or a Contractor to any core activity, if—

- (a) The normal functioning of the establishments is such that the activity is ordinarily done through Contractors, or
- (b) The activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods as the case may be
- (c) Any sudden increase of volume of work in the core-activity which needs to be accomplished in a specified time;

(2) Designated Authority:-

- (a) The 'Appropriate Government' may by notification in the official gazette appoint a designated authority to advise them on the question whether any activity of a given establishment is a core activity or otherwise:
- (b) If a question arises as to whether any activity of an establishment is a core activity or otherwise the aggrieved party may make an application in such a form and manner as may be prescribed, to the appropriate Government for decision;
- (c) The appropriate Government may refer any question by itself or such application made to him by any aggrieved party as prescribed in clause (b), as the case may be, to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as deemed fit shall forward the report to the appropriate Government, within a prescribed period and thereafter the appropriate Government shall decide the question within the prescribed period.

By virtue of Amended Act No.10 of 2003, Sections 3 to 5 of the Principal Act in Chapter II were also amended. In view of the same, at this length of time, this Court cannot issue any positive direction to the respondents to take action on the recommendations of the Board. However, if the petitioners feel aggrieved they can approach the competent authority under Section 10 of Act, 1970 and as per Amended Act No.10 of 2003 and they can also approach the competent Industrial Tribunal for adjudication of the same and for abolition of contract labour.

Accordingly, the Writ petition is dismissed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

October, 2018
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(M.GANGA RAO, J)

