

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

Date of Order: April 11, 2018

(i) + **W.P.(C) 22957/2005**

INDIAN OIL CORPORATION LTD. Petitioner
Through: Mr. Rajat Navet & Mr. Kushagra
Pandit, Advocates

Versus

PETROLEUM WORKERS UNION Respondent
Through: Mr. B.K. Singh, Advocate

(ii) + **W.P.(C) 22992/2005**

INDIAN OIL CORPORATION LTD. Petitioner
Through: Mr. Rajat Navet & Mr. Kushagra
Pandit, Advocates

Versus

GENERAL SECRETARY, BHARITYA SHRAMJIVI SANGH
..... Respondent
Through: Mr. B.K. Singh, Advocate

(iii) + **W.P.(C) 6915/2010**

INDIAN OIL CORPORATION LIMITED Petitioner
Through: Mr. Rajat Navet & Mr. Kushagra
Pandit, Advocates

Versus

GENERAL SECRETARY, BHARTIYA SHRAMJIVI SANGH
..... Respondent
Through: Mr. Sunil Dwivedi, Mr. Puneet
Saini & Mr. Bimal Prakash, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The challenge to the impugned Award of 19th September, 2005 in W.P.(C) 22957/2005 and of 20th September, 2005 in W.P.(C) 22992/2005 and of 25th June, 2010 in W.P.(C) 6915/2010 is on identical grounds. Central Government Industrial Tribunal (*henceforth referred to as the "Tribunal"*), vide aforesaid impugned Awards, has directed petitioner to regularize the service of respondents-workmen, as they had been doing perennial jobs from the year 1988 upto the year 2005. The above captioned first petition relates to 19 workmen; the second captioned petition relates to 27 workmen and the third captioned petition relates to 17 workmen, whose service has been directed to be regularized.

2. With the consent of learned counsel for the parties, the above captioned three petitions have been heard together and are being decided by this common judgment.

3. The facts are already noticed in the impugned Awards, which are not required to be reiterated. Suffice to note that respondents-workmen were employees of Contractors in the LPG Plant, Tirki Kalan and the contract labour stood prohibited vide Notification No. 734 (E) of 21st October, 1997. Claims were filed by Petroleum Workmen Union to seek regularization of their services. The Tribunal has concluded that Contractor used to change every two years but the workmen in question

kept on working from the year 1988 onwards. According to learned counsel for respondent-workmen, they are still working and by now, they have rendered service of about three decades. In the impugned Awards, the finding returned is that the contract for supply of labour was sham and bogus, as the Contractor used to change after every two years but the same workmen continued to work for years together.

4. To assail the impugned Awards, learned counsel for petitioner has drawn the attention of this Court to the evidence of petitioner's Manager-Mr. Stephen Ekka, who has stated that it was dependent upon the new Contractor whether he engages old workers or not. So, it is submitted that merely because the same set of workers kept on working for years together, it would not lead to a conclusion that petitioner's contracts for supply of labour were sham or bogus. It is the precise case of petitioner that neither there are pleadings nor evidence on record that contract of petitioner with the Contractors is sham or bogus and so, finding returned is not borne out from the evidence on record and thus, needs to be set aside. To submit that burden of proving relationship of employer and employee is on the workman and that the question whether a contract is sham, bogus or camouflage, reliance is placed by petitioner's counsel upon decision in *International Airport Authority of India Vs. International Air Cargo Workers' Union and Anr.* (2009) 13 SCC 374.

5. On the contrary, learned counsel for respondents-workmen support the impugned Awards and submit that in the face of evidence of petitioner's Manager - Mr. Stephen Ekka, the conclusion drawn by the Tribunal is justified. It is submitted that respondents-workmen are still

working, though under different Contractors. Learned counsel for respondents-workmen further submits that decision in *International Airport Authority (Supra)*, relied upon by petitioner's counsel has no application to the facts of these cases because it is not the case of respondents-workmen that relationship of employer and employee existed and what was sought by respondents-workmen was regularization of their service. So, it is submitted that these petitions deserve to be dismissed.

6. After having heard learned counsel for the parties and on perusal of impugned Awards, material on record and the decision the cited, I find it strange that same set of workmen continue to work though Contractors keep on changing every two years. The factual background of these cases reveal that though respondents-workmen were made available by various Contractors from time to time, for a period of almost three decades by now, but the direction and control over the respondents-workmen had always been of petitioner. In cases like the instant one, strict rules of pleadings cannot be applied, as respondents-workmen are illiterate persons. The finding of Labour Contracts in question being sham or bogus cannot be dislodged while relying upon decision in *International Airport Authority (Supra)* and *General Manager, (OSD), Bengal Nagapur Cotton Mills, Rajnandgaon Vs. Bharat Lal & Anr.* (2011) 1 SCC 635, because instant case is not of an employer and employee relationship. It has to be kept in mind that employment of contract labour stands prohibited vide afore-noted Notification issued way back in the year 1997. In such a situation, the impugned Awards cannot be quashed, as respondents-workmen cannot be made to perpetually work on contract

basis. It is not the case of petitioner that the work performed by respondents-workmen is not of perennial nature or that there is no vacancy to regularize the service of respondents-workmen.

7. In light of the aforesaid, while upholding the impugned Awards, the above captioned three petitions are dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 11, 2018

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