

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11684 of 2009

And

M.P.Nos.1 of 2009 and 1 of 2013

The Senior Manager-HRD,
Air India Ltd.,
(Now Known as National Aviation
Company of India Limited),
Air India Unity Complex,
Pallavaram,
Chennai-600 043.

..

Petitioner

vs.

1.The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Sastri Bhavan,
Chennai.

2.The Secretary,
Chennai Airport Contract Workers Union,
13, First Street,
Balaji Nagar,
Ankaputhur,
Chennai-600 070.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the concerned records from the first respondent relating to the Award dated 10.07.2008 in I.D.No.121 of 2005, directing the writ petitioner to regularise the services of the worker Selvan and quash the same as illegal, arbitrary, perverse and without jurisdiction.

For Petitioner : Mr.K.Srinivasamurthy

For Respondent-1 : Tribunal

For Respondent-2 : Mr.Balan Haridass

O R D E R

The Award of the Tribunal dated 10.07.2018 passed in I.D.No.121 of 2005, is under challenge in the present writ petition.

2. The writ petitioner is Air India Limited. The writ petitioner states that Air India has been operating flights and they have got offices in Chennai and other places. Air India has been registered as principal employer under the Contract Labour (Regulation and Abolition) Act, 1970. For minor plumbing works in their offices in Chennai, they have given it out on contract to M/s.Blessing Constructions in the year 2003. Earlier, they had given this contract to different contractors like Kamatchi Amman Electricals etc. One Mr.Selvan was working as a Plumber under these contractors. The last of such contractor was M/s.Blessing Constructions. Mr.Selvan claimed that he had been working from the year 1985.

3. The second respondent-Union raised a dispute that Mr.Selvan should be regularised in the permanent post in Air India Limited. A dispute was raised and the workman was examined himself as WW-1. The writ petitioner-management disputed that the said Mr.Selvan workman was not a member of the second respondent-Union and the Union had not raised any dispute on his behalf. Thus, the dispute was not sponsored by the second respondent-Union and therefore, it was not a valid industrial dispute under the provisions of the Industrial Dispute Act, 1947.

4. The writ petitioner further contended that they had not advertised for the recruitment to the post of a Plumber and it was not a sanctioned post and further Mr.Selvan-workman was not recruited by following the Recruitment Rules in force. The contention of the writ petitioner was that they had entrusted the work to M/s.Blessing Constructions, who in turn had deputed Mr.Selvan for the plumbing work in Air India Limited's establishment. In this regard, it is stated that the documents in Exs.M-3, M-7 and M-14 were regarding the plumbing contract work marked by the writ petitioner management. The copies of the bills raised by the said contractor were also marked as documents in Exs.M-4, M-8, M-10, M-12, M-15, M-17, M-19 and M-21. The copies of payments made to the said contractor were marked as Exs.M-5, M-9, M-11, M-13, M-18, M-20 and M-22. MW-1 Assistant Manager (HRD) gave evidence stating that the concerned employee was employed through the contractor. There is no sanctioned post of Plumber in the writ petitioner organization.

5. The learned counsel for the writ petitioner states that the workman Selvan in his evidence admitted that he had no membership card to prove that he was a member of the second respondent-Union. He further admitted that he had not filed any resolution passed by the Union for having raised this dispute. The workman further admitted that no appointment order was issued to him by the writ petitioner-Air India Limited and wages were paid only by the contractor. The learned counsel for the writ petitioner further states that the Award is directly in violation of the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka vs. Umadevi [(2006) 4 SCC 1]. Therefore, the Award is perverse and is to be scrapped.

6. The learned counsel for the writ petitioner in support of his contention cited the judgment of this Court in the case of Nellai Cotton Mills vs. Labour Court [(1965) 1 LLJ 95 (Mad.)], wherein this Court observed as follows:-

"Learned counsel for respondent-2 next urged that if the argument, in the form in which it has been put forward in this Court, had been advanced before the Labour Court, it would have given a decision on it, and that in view of the omission of the management to urge the argument in the present form, it cannot be raised again in this Court. Learned counsel for the petitioner, however, has referred to his counter-affidavit filed in the Labour Court, where the plea was raised that the dispute was an individual dispute and that the Labour Court could not go into it. It was for respondent-2, in such circumstances, to have made out the ingredients requisite for the purpose, namely, that a substantial number of the employees in the petitioner's mills took part in the resolution to sponsor the case of the dismissed worker. This aspect of the case goes to the root of the matter and unless a clear finding is given on this point, it cannot be held that the Labour Court had jurisdiction to hear and decide the dispute. In my opinion, the decision of the Labour Court is vitiated on this ground and that it amounts to an error patent on the face of the record."

7. In the case of Visalakshi Mills Ltd vs. Labour Court, Madurai [(1962) 2 LLJ 93 (Mad.)], wherein this Court observed as follows:-

"As I said, the Labour Court in this case merely proceeded on the basis of the number of workmen who are members of the Madurai Textile Workers' Union without reference to whether there was any collective decision expressed in any form to support the cause of Sankaran. In the absence of such a collective expression by a considerable or a substantial section

of the workmen of the Mills, the dispute raised by him cannot be said to have been converted into an industrial dispute. Apparently the Labour Court proceeded in that manner because the question was not placed before it in that form. Nevertheless, on the above ground the award will have to be quashed so that the Labour Court may consider the reference to it afresh."

8. The learned counsel for the second respondent-Union disputed the contentions of the learned counsel for the writ petitioner-management by stating that the second respondent-Union is entitled to raise a dispute on behalf of the workmen. The said proposition has not been disputed by the writ petitioner. When the second respondent-Union took up the issues for the benefit of workman Mr.Selvan and the grounds raised in this regard at this length of time, cannot be considered by this Court.

9. The Labour Court considered the fact that the workman Mr.Selvan was working for considerable number of years and even now he is performing his duties and responsibilities. Under these circumstances, the writ petitioner has to grant the benefit of regularisation and permanent absorption as the workman was continuously engaged by the writ petitioner for performing Plumber works in Air India Limited's establishment. When the workman is working in the particular establishment for a considerable length of years, the benefit of regularisation cannot be denied and therefore, the second respondent-Union raised a dispute on behalf of the workman for the purpose of securing regularisation to the member of the second respondent-Union Mr.Selvan.

10. In support of the contention, the learned counsel for the second respondent-Union referred to the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of Steel Authority of India Limited and Others vs. National Union Waterfront Workers and Others [2001 SCC (L&S) 1121], wherein in paragraph 125, held as under:-

"125. The upshot of the above discussion is outlined thus:

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer

is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] prospectively and declare that any direction issued by any industrial

adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10 (1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

11. In the case of P.Somasundaram vs. Labour Court [(1970) 1 LLJ 558], wherein the Andhra Pradesh High Court observed as under:-

"3. In order to make the dispute an industrial dispute, it is not necessary that there should always be a resolution of a substantial or an appreciable number of workmen. What is necessary is that there should be some expression of the collective will' of a substantial or an appreciable number of workmen treating the cause of the dismissed workman as theirs.

It is not again disputed that there was a general strike of all workers of the establishment numbering about 2,000, including the forty staff workers. The strike was in connection with a demand for a wage increase but it is admitted that one of the demands was also that the dismissed workman Subhani should be reinstated. The first witness examined for the management clearly admitted that the workers had refused to give up the strike unless Subhani was reinstated. That clearly was an unequivocal expression of 'the collective will' of the workers. In my opinion, the Labour Court was, therefore, right in holding that there was an industrial dispute. The writ petition is accordingly dismissed with costs. Advocate's fee, Rs. 100".

12. In the case of National Engineering Industries Ltd vs. State of Rajasthan and Others [decided on 01.12.1999 in Civil Appeal No.16832 of 1996], wherein the Hon'ble Supreme Court held as under:-

"Industrial Tribunal is the creation statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers' Union that tripartite settlement is in any mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the act and as such not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings."

13. Relying on the abovesaid judgment, the learned counsel for the second respondent-Union states that the workman Mr.Selvan is continuously working for many years and therefore, he is entitled to be regularised in a sanctioned post as an alternate. Submission is also made by the learned counsel by stating that even in case a decision is taken not to grant regularisation, then also the workman cannot be discharged from service as he is working for several years.

14. This Court is of the considered opinion that regularisation or permanent absorption cannot be claimed as a matter of right. The Constitution Bench of the Hon'ble Supreme Court of India, in the case of State of Karnataka vs. Umadevi

[(2006) 4 SCC 1], settled the principles regarding grant of regularisation and permanent absorption. Thus, the regularisation cannot be granted in violation of the Recruitment Rules in force and any such violation will result in unconstitutional denial of equal opportunity to all the eligible persons and the constitutional scheme of appointment is violated.

15. In the present writ petition, the workman Mr.Selvan was not appointed by the writ petitioner-Air India Limited. The second respondent-Union has not established that a valid appointment order was issued in favour of the workman Mr.Selvan. Contrarily, the writ petitioner-management is able to establish that they have engaged a contractor, namely, M/s.Blessing Constructions, who in turn engaged the services of the workman Mr.Selvan. Documents were filed in Exs.M-3, M-7, M-14, establishing that the plumbing contract was given to M/s.Blessing Constructions. The documents regarding the bills raised by the contractor were also marked as exhibits. Payments made to the said contractor were also marked as documents before the Labour Court.

16. However, not even a single document is filed by the second respondent-Union to establish that the workman Mr.Selvan was appointed by the writ petitioner-Air India Limited or the appointment was made directly by the writ petitioner-management. The evidence of the workman Mr.Selvan, more specifically, in cross-examination reveals that he could not able to submit any membership card to prove his membership with the second respondent-Union. Further, the workman Mr.Selvan has not filed the copy of the resolution passed by the Union to raise an industrial dispute.

17. Under these circumstances, this Court is unable to come to a definite conclusion that the workman Mr.Selvan is the member of the second respondent-Union or the Union had passed a resolution for the purpose of raising an industrial dispute on behalf of the workman. In the absence of establishing these basic factors, the Labour Court ought not to have entertained an industrial dispute filed by the second respondent-Union. Thus, the entertainment of industrial dispute by the Labour Court had itself is perverse and the precondition for entertaining the industrial dispute filed by the second respondent-Union has not been violated and accordingly, the Award is liable to be set aside on this ground.

18. Even otherwise also mere length of service by an employee would not confer any right to claim regularisation. The writ petitioner-management has established that there is no

sanctioned post of Plumber in their organization. Even in case of sanctioned post, the process of selection is to be conducted by providing equal opportunity to all the eligible persons, who all are aspiring to secure employments. Appointments are to be made only under the Constitutional Schemes and by following the procedures contemplated under the Recruitment Rules in force. Thus, the benefit of regularisation cannot be granted merely on the ground that a person was engaged as a temporary employee by a contractor, who was engaged by the principal employer.

19. However, if the services of the workmen are required through the contractor, there is no impediment for the writ petitioner-management to continue the engagement through the contractor by making the terms and conditions clear. In other words, there is no impediment for continuing the contract if the services of the workmen are required in the organization. Such services, provided on temporary basis through the contractor, can never be claimed for the purpose of granting regularisation by the workmen.

20. This being the factum of the present case, this Court is of the considered opinion that the second respondent-Union has not established that the workman Mr.Selvan is a member of the second respondent-Union only showed that they have passed resolution to raise an industrial dispute. This apart, the workman also not established that he was properly appointed by the writ petitioner-Air India Limited by issuing an appointment order or the writ petitioner-management has paid salary or other remuneration to the workman directly.

21. This being the factum, this Court has no hesitation in coming to the conclusion that the Award of the Tribunal is perverse and accordingly the Award dated 10.07.2008 passed by the first respondent-Tribunal in I.D.No.121 of 2005 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY
Sd/-
Assistant Registrar(CCC)
//True Copy//

Sub Assistant Registrar

Svn

To

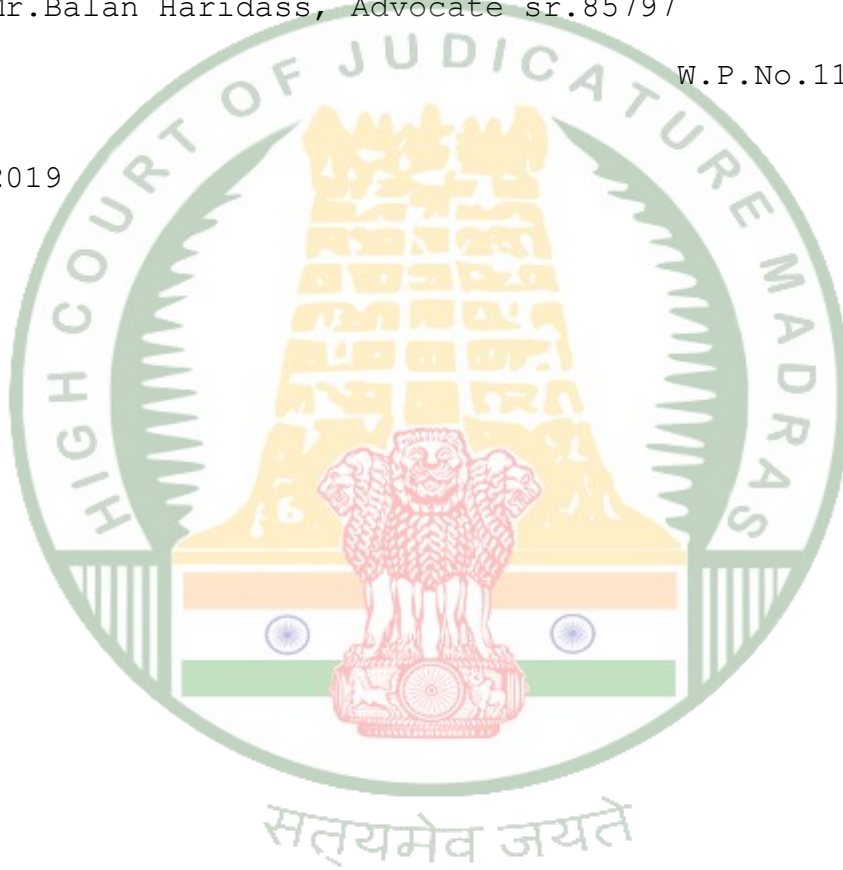
1.The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Sastri Bhavan,
Chennai.

+lcc to Mr.N.G.R.Prasad, Advocate sr.86447

+lcc to Mr.Balan Haridass, Advocate sr.85797

W.P.No.11684 of 2009

pp(co)
nr 19/11/2019



WEB COPY