

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5067 of 2016

S.Karthik

..Petitioner

Vs.

1.Oil and Natural Gas corporation Limited (ONGC)  
represented by its Chairman and Managing Director,  
Jeevan Bharati Building Tower - II,  
124, Indira Chowk, Connaught Place,  
New Delhi - 110001.

2.Oil and Natural Gas Corporation Limited (ONGC),  
represented by its Regional Director,  
Southern Regional Business Centre (SRBC),  
No.1, CMDA Towers, 6<sup>th</sup> - 11<sup>th</sup> floor,  
Gandhi Irwin road,  
Egmore, Chennai - 600008.

3.Union of India,  
Represented by Secretary to Government,  
Labour Department,  
Shram Sakthi Bhavan,  
New Delhi.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Mandamus directing the first and second respondents to absorb the Petitioner into their organization as a Radio Marine Operator or any other suitable equivalent post with effect from 08.09.1994 on the basis of orders of this Court passed on 02.08.2006 in W.P.No. 21518 of 2000 under same/similar circumstance; which was affirmed by the Division Bench of this Court on 19.12.2006 in Writ appeal No. 1290 of 2006; followed by an order of this Court in two other Writ petitions seeking similar reliefs viz., W.P.Nos. 27500 of 2006 and 27529 of 2006 on 04.04.2007; and also, by the Hon'ble Supreme Court judgment dated 04.04.2014 in Civil Appeal No. 1816 of 2014 Special Leave Petition (C) No. 23272 of 2012.

For Petitioner : Mr.V.Prakash  
Senior Counsel  
for M/s.S.P.Vijayaragavan

For R1 & R2 : Mr.M.Vijayan  
for M/s.King and Partridge

For R3 : M/s.S.Makesh,  
Additional Central Government  
Standing counsel (ACGSC)

O R D E R

The relief sought for in the present writ petition is for directing the first and second respondents to absorb writ petitioner into their organization as a Radio Marine Operator or any other suitable equivalent post with effect from 08.09.1994 on the basis of orders of this Court passed on 02.08.2006 in W.P.No. 21518 of 2000 under same/similar circumstance, which was affirmed by the Division Bench of this Court on 19.12.2006 in Writ appeal No.1290 of 2006; followed by an order of this Court in two other Writ petitions seeking similar reliefs viz., W.P.Nos. 27500 of 2006 and 27529 of 2006 on 04.04.2007, and also, by the Hon'ble Supreme Court judgment dated 04.04.2014 in Civil Appeal No.1816 of 2014 Special Leave Petition (C) No. 23273 of 2012.

2. The learned senior counsel appearing for the writ petitioner contended that the writ petitioner had served as a Radio Marine Operator directly as well as indirectly as a contract labour. The writ petitioner was initially engaged as a contract labour in the year 1988 and he was working till the year 1991. Thereafter, the writ petitioner was serving as a contract labour from the year 1992-1994. Further, he was engaged as a Radio Operator during the year 2008 and was working till the year 2010.

3. The Government of India, Ministry of Labour had issued notification in exercise of the powers conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government, after consultation with the Central Advisory Contract Labour Board, hereby prohibits the employment of contract labour in various works, specified in the Schedule annexed hereto, in the establishments of the Oil and Natural Gas Commission in the country and the schedule post of Radio Operators has also been notified.

4. It is further contended that all the contract labours, who were in service during the relevant point of time have to be treated as regular employees for all purposes. In view of the abolition of the contract labour in Oil and Natural Gas Commission, the existing contract labourers as on the date of issuance of the notification ought to be treated as regular employees of ONGC. Consequently, the writ petitioner is also entitled to be absorbed in the permanent vacancy.

5. It is further contended that the co-employees filed writ petition in W.P.No.21518 of 2000 and an order was passed by this Court on 02.08.2006. The writ petitioners who filed the writ petition sought for the prayer to absorb the petitioners therein as Marine assistant Radio Operators, with effect from 08.09.1994 on the basis of the abolition of contract labour and as per the recommendations dated 04.06.1999 of the Ministry of Petroleum and Natural Gas, Government of India to the Oil and Natural Gas Corporation Limited. In respect of those employees, the writ petition was allowed and a direction was issued to absorb the writ petitioners therein as Marine Assistant Radio Operators with effect from 08.09.1994 on the basis of abolition of Contract labour and as per the recommendations dated 04.06.1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the Oil and Natural Gas Corporation Limited. The said order of this Court allowing the claim of the similarly placed persons was taken by way of appeal by the Oil and Natural Gas Corporation Limited in Writ Appeal viz., W.A.No.1290 of 2006 and the Division Bench of this Court passed an order dated 19.12.2006 dismissing the Writ Appeal. The Oil and Natural Gas Corporation Limited further preferred a Special Leave Petition (C) No.23272 of 2012 before the Hon'ble Supreme Court and the same was also dismissed.

6. Relying on the above judgments, the learned Senior Counsel appearing for the writ petitioner would contend that the benefit of the judgment is to be extended to the writ petitioner, as he is also similarly placed employee and served as a contract labour during the relevant point of time in the year 1994. However, the benefit of absorption was not granted uniformly and consistently by the respondent corporation. The judgments of the learned Single Judge as well as the Division Bench are in rem and therefore, no separate applications or representations are required from the other employees and the judgments are to be implemented in respect of the similarly placed employees, who all are affected and, who are in service as contract labour during the relevant point of time, when the notification was issued by the Government of India on 08.09.1994.

7. The learned senior counsel appearing for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of "State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others, reported in (2015) 1 SCC 347", legal principles in the matter extending benefit to the similarly placed persons are settled by the Hon'ble Supreme Court in paragraph No.22.3 of the judgment, which is extracted here under:

"However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C.Sharma Vs. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

8. Relying on the legal principles enumerated in paragraph No.22.3 of the Hon'ble Supreme Court judgment, cited supra, the learned senior counsel reiterated that the writ petitioner is also a similarly situated person and whether he approached the Court or not, the benefit ought to have been extended by the respondents in such case.

9. It is further contended that the judgment of the learned Single Judge, at the first instance itself is a judgment in rem and a policy decision taken by the Government of India and consequent to the policy decision, on Abolition of Contract Labourer System, the employees who were in service as contract labourers during the relevant point of time, ought to have been observed in entirety without any further approach or orders in this regard. Contrarily, the respondent had implemented and absorbed the petitioners, who had approached the Court alone and the action was in violation of the observation made by the Hon'ble Supreme Court of India.

10. The learned counsel appearing for the respondents strenuously disputed and opposed the contention raised on behalf of the writ petitioner by stating that the facts submitted regarding the service rendered by the writ petitioner itself is doubtful and incorrect. It is admitted that the writ petitioner was employed as contract labourer from the year 1988-1991. Further, the respondent Corporation is not having any record to establish that the writ petitioner was employed as a contract labourer during the year 1992-1994. More specifically, the counter affidavit in this regard enumerates in paragraph No. 5 that ONGC is a vast organization and every year it has been engaging thousands of contract workers. During the last 23 years, few lakhs of contract labourers were engaged by ONGC. As per Rule 80(3) of the Contract Labour (Central) Rules, 1971 all registers and records to be maintained under the rules should be preserved in original for a period of 3 years from the date of last entry therein. In the present case the petitioner has filed the Writ Petition after 23 years alleging that he worked as a contract labourer alleging that he worked as a contract labour till 1994. At this point of time, this respondent is not able to verify the averments and allegations alleging that he worked as a contract labourer 23 years ago.

11. Relying on the said contention, the learned counsel for the respondent reiterated that the writ petitioner was not in service during the relevant point of time, when the Government of India issued notification Abolition the Contract Labourer System. Thus, he cannot claim benefit of the judgment of the learned Single Judge. This Judgment cannot be construed as judgment in rem. In this regard, the learned counsel for the respondent relied upon the judgment of the learned Single Judge of this Court in W.A.No.1290 of 2006, dated 19.12.2006. The judgment reads as follows:

"In the result, the writ petition is allowed as prayed for. The respondents are directed to absorb the petitioners as Marine Assistant Radio Operators with effect from 08.09.1994 on the basis of the abolition of contractor labour and as per the recommendations dated 04.06.1999 of the Ministry of Petroleum Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23.09.1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits."

12. Relying on the said orders of the learned Single Judge, in writ petition, the learned counsel appearing for the respondent stated that such an order can never be construed as

the judgment in rem and it is to be considered as judgment in personam and therefore, now after a lapse more than 23 years, the writ petitioner cannot submit a representation to the respondent to extend the benefits granted to the other similarly placed persons.

13. The learned counsel for the respondent further relied on the judgment 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 reported in [2001 (7) SCC 1]. Citing the above Constitutional Bench Judgment of the Hon'ble Supreme Court of India, it is contended that the judgment reported in 1997 (9) SCC 377 - [Air India Statutory Corporation Vs. United Labour Union], was overruled by the Constitution Bench in the case of Steel Authority of India Limited (cited supra) and the Hon'ble Supreme Court observed as follows:

"We overrule the judgment of this Court in Air India case (cited supra) prospectively and declare that any direction issued by the any industrial adjudicator/any Court including the High Court, for absorption of contract labour following the judgment in Air India case 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."

14. Thus, it is contended that the Constitution Bench judgments in the case of Steel Authority of India Limited (cited supra), is not applicable in respect of the facts and circumstances of the case, and this writ petitioner is not entitled to get benefit of the similarly placed persons or he can not claim absorption now after a lapse of more than 23 years from the date of issuance of notification of the Government of India, Abolishing the Contract Employment System.

15. Considering the arguments as advanced by the respective learned senior counsel appearing for the petitioner as well as the learned counsel appearing for the respondents, this Court is of the opinion that the fact remains that the writ petitioner was initially entered as a contract labourer during the year 1988 and was in service till 1991. Though, the writ petitioner claims that he served as contract labourer in between the years 1992 - 1994, the respondent disputed the said contention by stating that no records are available and no proof is available to show that the petitioner was in service during the year 1994. Even in case the petitioner was in service during the year 1994, he had not filed the writ petition nor approached the respondent during the relevant point of time for the purpose of absorption

or to redress his grievance.

16. Contrarily, it is contended that the writ petitioner had served elsewhere including other countries. This apart, there was a enormous delay on the part of the writ petitioner in approaching respondent by way of representation to extend benefit of the judgment of the Court, which was issued in the year 2006. The other similarly placed persons approached the High Court in time and the relief was granted and the said relief was confirmed by the Hon'ble Supreme Court.

17. It is curious to note that the representation submitted by the writ petitioner on 22.09.2015, reveals that the writ petitioner had recently came to know about the Court proceedings/order of the Hon'ble Supreme Court and Madras High Court pertaining to Marine Radio Officer, who were working on contract basis with the ONGC and only on perusal of the Hon'ble Supreme Court orders dated 04.02.2014, the writ petitioner has approached the respondent for absorption. Even the representation further proceeded by the stating that having come to know now the petitioner made request for reinstatement in a suitable post on par with other similarly placed persons. Thus, the petitioner at no point of time has approached the respondent for reinstatement or for permanent absorption based on the relief granted to the other similarly placed persons, at that first time. The petitioner submitted a representation on 22.09.2015 after a lapse of more than two decades from the date of employment in ONGC. Thus, the claim is not only stale, but highly belated.

18. Under these circumstances, this Court is of the considered opinion that the principles laid down by the Hon'ble Supreme Court in paragraph 22.2 in the case of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others, reported in (2015) 1 SCC 347 is to be applied and the same reads as under:

"However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim."

19. The Hon'ble Supreme Court in unequivocal terms held that principles laid down in paragraph No. 22.2 is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

20. In respect of the lis on hand, the writ petitioner admitted that he was engaged as a Contract Labourer for sometime by the respondent Corporation. However, the writ petitioner never approached the respondents for absorption nor approached the Court of law along with his colleagues for the redressal of his grievances regarding permanent absorption. Contrarily, the writ petitioner left his job, served elsewhere for many number of years and after the completion of the legal battle by other similarly placed persons, the writ petitioner submitted his representation to the respondents seeking permanent absorption, after a lapse of about twenty three(23) years.

21. Undoubtedly, seeking regularization or permanent absorption in any organization is the personal grievances of the employee and the employee eligible for grant of regularization or permanent absorption has to approach the competent authorities for redressal of his grievances. In the present case, the respondents have not granted the benefit of absorption or regularization. Thus, the group of employees approached the Court of law and finally succeeded and got the benefit of permanent absorption. During the relevant point of time, the writ petitioner admittedly had not taken any efforts to redress his grievances along with his co-employees. The writ petition filed by the similarly placed persons was disposed of during the year 2006 and the Writ Appeal as well as the Special Leave Petition(S.L.P) filed before the Hon'ble Supreme Court of India were also disposed of. Till such time, the writ petitioner had not submitted any representation to the respondents nor approached the Court of law, seeking the benefit of permanent absorption. Thus, the writ petitioner has slept over his right for many number of years and wake up one fine morning and knock the doors of the Court of law for redressing his grievances for extending the benefits granted to the other similarly placed persons.

22. Under these circumstances, the legal principles enumerated in Paragraph 22.2 of the judgment of the Hon'ble

Supreme Court of India in the case of State of Uttar Pradesh and others (cited supra) is squarely applicable. This apart, the writ petitioner even at the time of filing of the writ petition was aged about 48 years and now he would be around 52 years. This being the factum, the relief as such sought for in the writ petition for permanent absorption deserves no merit consideration and the writ petitioner has not established any acceptable legal ground for the purpose of granting such relief.

23. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

dua/tta/kak

To

1. The Chairman and Managing Director,  
Oil and Natural Gas Corporation Limited (ONGC)  
Jeevan Bharati Building Tower - II,  
124, Indira Chowk, Connaught Place,  
New Delhi - 110001.
2. The Regional Director,  
Oil and Natural Gas Corporation Limited (ONGC),  
Southern Regional Business Centre (SRBC),  
No.1, CMDA Towers, 6<sup>th</sup> - 11<sup>th</sup> floor,  
Gandhi Irwin road,  
Egmore, Chennai - 600008.
3. The Secretary to Government, Union of India,  
Labour Department,  
Shram Sakthi Bhavan,  
New Delhi.

+1 CC to M/s. King and Partridge, sr 76702.

W.P.No.5067 of 2016

BR(CO)  
SP(03/10/2019)