

**Form No. J(2).  
Item No.14**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

HEARD ON: 28.11.2022

DELIVERED ON: 28.11.2022

**CORAM:  
THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM  
AND  
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**F.M.A. 339 of 2020**

**Raju Mishra & Ors.  
VERSUS  
Union of India & Ors.**

**Appearance:-**

**Mr. Soumya Majumdar  
Mr. Victor Chatterjee**

**....for the appellants**

**Mr. Arunabha Ghosh  
Mr. Ashok Kr. Jena**

**.....for the Kolkata Port Trust**

**JUDGMENT**

***(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)***

1. This intra-Court appeal by the writ petitioners is directed against the order passed by the learned Single Bench

in W.P. No. 20171(W) of 2005 dated 23<sup>rd</sup> June, 2015. The writ petition was filed by the appellants for issuance of a writ of mandamus to direct the respondents and in particular the Kolkata Port Trust to appoint the appellants on regular basis for the purpose of maintenance, laying, linking, changing etc. of railway tracks stretching for 78 kilometres within the Port Trust area.

2. The case of the appellants is that they have been employed by the Port Trust for the purpose of carrying on the maintenance, laying, changing etc. of railway tracks and they have been continuing in employment for several years and the work is perennial in nature and the contention of the Port Trust that they are not direct employees of the Port Trust but are the employees of a contractor is a stand, which is not acceptable and cannot be taken.

3. Further, the appellants had pointed out that the appropriate authority under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'said Act') exercised its powers under section 10(1) of the said Act and have prohibited the employment of contract labour in the work of sleeper renewal of railway tracks, repairing, restoration and railway tracks establishments in the Kolkata Port Trust. Therefore, it was contended that they are entitled for regular absorption.

4. The learned single Bench had dismissed the writ petition by referring to the decision of the Hon'ble Supreme Court in **Steel Authority of India Ltd. & Ors. vs. National Union Waterfront Workers & Ors.** reported at (2001) 7 SCC 1. It is the endeavour of Mr. Majumdar to convince us by referring to paragraph 125 of the Judgment in *Steel Authority of India Ltd. (supra)*, more particularly sub-paragraphs 5 and 6. It is submitted that in terms of the decision of the Hon'ble Supreme Court on issuance of prohibition notification under section 10(1) of the said 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 employee 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. Sub-para 6 of paragraph 125 was also referred to support the argument that if the notification issued under section 10(1) of the Act prohibiting employment of contract labour has been held to be valid, then the contract labour would be entitled for being given preference by the employer.

5. In our considered view, all these issues are academic in the present appeal as the appellants had approached the learned writ Court under Article 226 of the Constitution praying for issuance of a writ of mandamus to regularise the services of the appellants.

6. It is well-settled legal position that a writ of mandamus cannot be issued directing regularisation of an employee. That apart, merely because the notification issued under section 10(1) of the said Act is held to be genuine, then it does not mean that the contract labourers would automatically get a vested right to be absorbed as regular employees of an establishment. Therefore, the appellants were before the wrong forum qua the prayers sought for in the writ petition. Therefore, we are of the view that the learned writ Court rightly declined to grant the relief sought for.

7. In the result, the appeal fails and is dismissed.

8. There shall be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(T.S. SIVAGNANAM, J.)**

I agree,

**(HIRANMAY BHATTACHARYYA, J.)**

RAJA/Pallab, AR(Ct.)