

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

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

HEARD ON: 05.12.2022

DELIVERED ON: 05.12.2022

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

**M.A.T 1532 of 2018
with
I.A. No.CAN 2 of 2019 (Old No.CAN 3229 of 2019)**

**Union of India & Anr.
Vs.
Railway Contractor Labour
Union (West Bengal) & Ors.**

Appearance:-

**Mr. Ashok Kr. Chakraborty, Ld. ASG
Mr. Sanajit Kumar Ghosh**

.....for the appellants

**Mr. Arunabha Ghosh, Sr. Adv.
Mr. Swarup Pal
Mr. Guru Saday Dutta
Mr. Anish Roy**

.....for the respondent nos. 1 & 2

JUDGMENT

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

1. This intra-Court appeal filed by the Union of India and Anr. is directed against the order dated 27th August, 2018 in

WP No.251 (W) of 2017. The said writ petition was filed by the respondents/trade union praying for issuance of writ of mandamus to withdraw the order dated 13th July, 2016 passed by the appropriate authority under the provisions of Contract Labours (Regulation & Abolition) Act, 1970 (for short 'the Act') holding that the case does not merit issuance of a notification under Section 10 of the Act and accordingly, it was decided by the Central Government to bring the 'Appropriate Government' under the Act and not to abolish employment of contract labour in jobs/works on electric machine for automatic fare collection and passenger control system in the establishment of Metro Railways, Kolkata.

2. The learned writ Court had allowed the writ petition not confining to the prayers sought for by the respondents/trade union but proceeded a step further by directing the appellants to grant permanent employment to all the workmen represented by the trade union within a time frame. The correctness of the said order has been challenged in this appeal.

3. We have heard Mr. Ashok Kr. Chakraborty, learned Additional Solicitor General duly assisted by Mr. Sanajit Kr. Ghosh, learned advocate for the appellants and Mr. Arunabha Ghosh, learned senior advocate assisted by Mr. Swarup Pal, learned advocate representing the respondents/trade union.

4. The main issue is no more res integra. In the decision of the Hon'ble Supreme Court in **Steel Authority of India Limited & Ors. vs. National Union Waterfront Workers & Ors.** reported in (2001) 7SCC 1 the Hon'ble Supreme Court pointed out as follows.

"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* 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 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) 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 of 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.

126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review.

5. In terms of the above decision the writ Court is precluded from considering the prayer for regularization of a contract employee. Thus, the very issue was considered by the Hon'ble Full Bench of this Court in the case of **Awadhesh Singh vs. Union of India** reported in **2013 (3) CHN Cal 407** and

paragraphs 14 and 15 of the said judgment would be relevant for our purpose, which are quoted hereinbelow.

"14. The definitions of service matter and the provisions contained in sections 14 and 28 of the Act of 1985 make it amply clear that Industrial Tribunal as well as the Central Administrative Tribunal has jurisdiction to deal such matters. However, the High Court can not directly entertain a writ petition in respect of a dispute that is covered by the Act of 1985 and is related to the affairs of the Eastern Railway. Section 28 of the Act of 1985 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims that he is a workman, therefore, will have a right of election in the matter of choice of forum. Particularly, when regularization of service has been claimed, in our opinion, this Court will not have the jurisdiction to entertain such a matter directly and the petition has to be filed eiether before the Central Administrative Triubunal or the appropriate forum under the ID Act as per choice of the employee/workman.

15. In this context, the substance of the grievance and relief that the party aggrieved seeks are also of some relevance. Assuming that the claim of the contract labours succeed before the Central Administrative Tribunal, an order would necessarily follow directing their regularization/absorption in Railway service. In view of the decision in L. Chandra Kumar (supra), the High Court can be approached after the first round of litigation is initiated before the Central Administrative Tribunal and not directly."

6. Further, the Hon'ble Full Bench also took note of the decision of the *Steel Authority of India Limited (supra)* and held that the disputed questions of fact cannot be adjudicated in the writ petition and it is the Industrial Tribunal/Labour Court that would be the appropriate authority to determine the issue.

7. In the light of the settled legal position, the relief granted by the learned writ Court directing regularization or grant of permanent employment to the members of the respondents/trade union is wholly without jurisdiction.

8. We make it clear that the respondents/trade union should not be left remediless. As pointed out by the Hon'ble Supreme Court as well as by the Hon'ble Full Bench of this Court, it is the Industrial Tribunal which would be the appropriate forum before whom the trade union can raise a dispute.

9. For all the above reasons, the appeal is allowed and the order passed by the learned writ Court is set aside and the writ petition is dismissed with liberty to the respondents/trade union to raise the dispute before the appropriate Industrial Tribunal and if it is done, the dispute shall be entertained without reference to limitation and the trade union will be entitled to canvass all factual and legal issues before the Tribunal, which shall be considered and decided in accordance with law.

10. Since the matter is lingering from 2016, if the respondents/trade union raise the dispute within a period of two months from the date of receipt of the server copy of this order, then the concerned Industrial Tribunal shall expeditiously dispose of the matter subject to the parties cooperating in the disposal, preferably within a period of

three months from the date on which the oral and documentary evidence are marked and trial is concluded.

11. No costs.

12. 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.)