

Ct. No. 04

Akd

**Swapan Santra
Vs.
The Union of India & Ors.**

Mr. Ujjal Roy,
Mr. Arpa Chakraborty.
... for the petitioner.
Mr. Suman Chattopadhyay.
... for the respondent nos. 1&2
Mr. Bhaskar Prosad Banerjee,
Mr. Tapan Bhanja.
... for the respondent no. 3.

Admittedly the petitioner was engaged with effect from 1st October, 1998 under Director General of Central Excise Intelligence on casual basis and was receiving the salary/emoluments. It appears that the aforesaid appointment was on “as and when required” basis, but according to the petitioner he continued to render services until the Department discontinued his services on the basis of a circular.

The Tribunal was approached basically for twin reliefs; firstly because of continuance in service over a period of ten years, his services must be regularized; and secondly since the salary was paid under the head of “wages” and not “office expenditure”, the discontinuance of service is impermissible.

A plea was taken by the contesting respondents before the Tribunal that the payment was made under the head of “office expenditure” and not “wages”, as such head was not allotted to the concerned Department. It was further contended that as per Rule 198 of General Finance Rule, 2017 - Procurement of Non-consulting Services - the payment can only be made through service provider and not directly. The tribunal application came to be dismissed solely on

the ground that the moment the Rule has been framed providing outsourcing such non-consulting services, the petitioner cannot claim any right in respect thereof and it appears to us that an advice was also given to the petitioner to work in the Department through such service provider.

The learned Advocate for the petitioner fairly concedes that the petitioner cannot lay any claim on regularization of service though at one point of time the process was initiated in this regard, but could not be fructified into a fruitful result. He submits that the decision outsourcing the services through casual worker by engaging service provider by replacing the casual worker has been deprecated by a Division Bench of Rajasthan High Court in case of *Union of India vs. Jeevan Singh Gehlot* reported in 2015 SCC OnLine Raj 4696. It is contended that such practice was deprecated and the direction was passed by the authority to continue with the services of the respondent therein on casual basis.

It is manifest from the aforesaid judgement that identical situation arose when the casual workers employed in the Department of Income Tax were removed citing Rule 178 of General Finance Rules, which provides outsourcing of such services. The Rule, which is applicable in the instant case, is identical and similar to the aforesaid Rule, as Rule 198 of General Finance Rule, 2017 also provides for outsourcing of non-consulting services and the expenditure to be charged under the head "office expenditure". The Division Bench of the Rajasthan High Court held:

"6. It is a fact admitted that the respondent original applicants are working with the department of Income Tax on casual basis from

last several years. Though, by way filing original applications they claimed for regularisation of their services but that was not pressed during the course of hearing. The only claim, thus, made by the original applicants was with regard to their continuance in service. Learned Central Administrative Tribunal by taking into consideration different aspects of the matter arrived at the conclusion that no useful purpose shall be served by removing the original applicants from service to utilise service of the personnels supplied through service providers.

7. True it is, the Government of India under the office memorandum dated 23.11.2005 desired to curtail unwarranted expenses and further emphasised not to regularise casual labourers, but that cannot be a reason to terminate the original applicants from service who are working on casual basis only and not claiming for regularisation of their service. The continuance of such employees shall in no case put any extra economic burden upon the employer. The persons who shall be employed through service providers shall also be entitled for same remuneration and the service provider too shall claim its commission, therefore, that will in no manner satisfy desire of the petitioner respondent to curtail expenses. On the other hand, removal of the respondent original applicants who are in service of the petitioners from several years shall be quite arbitrary as they will be thrown out of employment without any wrong on their part. The position would have been different if the petitioner would have been going to have regular recruitment against the posts occupied by the original applicants but that is not

the case of the petitioner. The petitioner want to removed the original applicants from service just to have labour through contractor with a view to reduce expenditure but that object, as already stated, cannot be served as the applicants too are working on casual basis only.

8. So far as Rule 178 of the General Finance Rules is concerned, suffice to mention that the mode of utilising services through outsourcing is always available to the petitioners but merely on that count services of the casual labourers already working are not required to be dispensed with. In our considered opinion, the Central Administrative Tribunal, thus, rightly directed the petitioner respondent not to remove the respondent original applicants from service by another substituted employees under any guise or cover.”

The aforesaid judgement of the Division Bench of Rajasthan High Court was assailed before the Supreme Court in a Special Leave to Appeal (Civil) No. 2587/2016 and the same was dismissed on 15th February, 2016.

Discontinuance of service abruptly by replacing with the similar kind of engagement for rendering the same service cannot be appreciated nor appears to be a sound policy. The object for outsourcing such services as it appears from Rule 198 of General Finance Rule, 2017 is in the interest of economy and efficiency; meaning thereby to reduce the burden on the Department of such payment and minimise the expenditure to be incurred on engagement of casual employees. The object which appears to be laudable from the language employed in the said Rule does not appear to have been applied with the purpose for which it has been done for the simple reason that the

expenditure incurred by the Department for payment of salary/emoluments/any amount would increase by engaging the service provider, who would employ the equally efficient casual employees and obviously paying the same amount of salary / emoluments / money in whatever name it is called with extra burden of the profitability for running such establishment providing the services as required.

There is no rational which could be seen from the aforesaid decision of the respondent authorities far to speak of saving its cost and expenditure of the Department; rather the impression, which this Court gather from the above, that it would augment or enhance the expenditure.

There is another principle in this regard that discontinuance of ad hoc or casual workers by replacing another casual or ad hoc worker is impermissible so long the permanent sanctioned posts are not filled up taking recourse to the Rules of recruitment in this regard.

The Apex Court in case of *Hargurpratap Singh vs. State of Punjab & Ors.* reported in (2007) 13 SCC 292 deprecated such course to be adopted in the following:

“We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more

beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service til regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.”

It is, thus, not open to the respondents to disengage the casual workers and outsource such service to an agency, who will definitely employ such casual workers without attempting to fill up the permanent sanctioned post, if there be any, in this regard.

From whatever angle we look at the matter, we find that the approach of the Tribunal is not proper and ought to have taken into account the law enunciated in the above Reports to have applicability in the instant case and should have passed the necessary directions instead of dismissing the tribunal application.

Since the parent order is found to be erroneous and not in consonance with the law, we are inclined to set aside the same; as a consequence whereupon the order passed on an application for review cannot be sustained independently.

Accordingly, both the parent order dated 14th January, 2020 disposing of the original application and the order dated 16th March, 2020 dismissing the review application are hereby set aside.

The concerned respondents are directed to continue with the engagement of the petitioner and shall disburse the money as used to be disbursed

from the head which continued for such a long time and if necessary shall approach the Finance Authority for disbursement of such amount under such head.

So far as the disengagement of the petitioner is concerned, since 2018 the petitioner actually did not work and, therefore, is not entitled to any monetary benefit for such period. The engagement shall continue from 1st April, 2023 with all the benefits, which the petitioner enjoyed uptill the date of disengagement.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)