

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 2266 of 2023

With

IA NO. CAN 2 of 2024

Sri Kanailal Sardar & Ors.

Vs.

The Indian Oil Corporation & Ors.

For the Appellants : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv
 Mr. Samim Ahammed, Adv.
 Mr. Arka Maiti, Adv.
 Ms. Ambiya Khatoon, Adv.
 Ms. Saloni Bhattacharyya, Adv.
 Mr. Arka Ranjan Bhattacharyya, Adv.
 Ms. Gulsanwara Pervin, Adv.

For the Respondents : Mr. Soumya Majumder, Adv.
 IOCL Ms. Sharmistha Ghosh, Adv.
 Mr. Victor Chatterjee, Adv.
 Mr. Ranit Ray, Adv.

Hearing Concluded on : June 24, 2024

Judgement on : July 18, 2024

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgement and order dated August 18, 2023 passed in WPA 23964 of 2014. By the impugned judgement and order, the learned Single Judge has

dismissed the writ petition of the appellants seeking regularisation of their services.

2. Learned senior advocate appearing for the appellants has contended that, the appellants were engaged by a contractor for the purpose of discharging duties of the respondent. He has pointed out that, both salary as well as bonuses were paid to the appellants by the respondent. He has referred to documents to show that the list of employees engaged by the respondent had been acknowledged by the respondent.

3. Learned senior advocate appearing for the appellants has contended that, the so-called contractor engaged by the respondent and under whom, the employment of the appellants were shown, has been acknowledged by the respondent itself to be non-existent. In this regard, he has referred to inter office memo of the respondent dated June 21, 2017, where, the respondent acknowledged that the contractor was a nonentity. He has also referred to documents to show that, salary as well as bonuses had been paid by the respondent directly to the appellants.

4. Learned senior advocate appearing for the appellants has contended that, respondent cannot deny the fact that, the

contractor under whom, employment of the appellants were shown, was in fact a nonentity. Both wages and bonuses having been paid directly by the respondent, the issue of regularisation of services of the appellants ought to be answered in favour of the appellants.

5. Relying upon **2013 Volume 14 Supreme Court Cases 65 (Nihal Singh and others versus State of Punjab and others)**, learned senior advocate appearing for the appellants has contended that, since the contractor in between the respondent and the appellants was a nonentity and acknowledged by the respondent to be so, the appointments have to be considered to be made by the respondent as disciplinary control vested with the respondent. Therefore, two essential factors establishing the relationship of master and servant had existed between the appellants in the respondent during the service period of the appellants.

6. Referring to **AIR OnLine 2022 Cal 1313 (North Bengal State transport Corporation versus Sanjoy Kundu)**, learned senior advocate appearing for the appellants has contended that, the contract between the transport company and the contractor was found not to be genuine therein. Consequently, the employees appointed through such

contractor had been granted the reliefs. The appellants herein are entitled to similar reliefs.

7. Relying upon **2001 Volume 7 Supreme Court Cases 1 (Steel Authority of India Ltd and Others Versus National Union Waterfront Workers and Others)** learned senior advocate appearing for the appellants has contended that, where the contract between the employer and the labour contractor was found to be a sham and non-existent the contract labourer should be held to be working under the principal employer itself. According to him, facts and circumstances of the present case has established that, all the appellants were working under the respondent and therefore, are entitled to be regularised. According to him, learned single judge has erred in not directing regularisation of the services of the appellants.

8. Learned advocate appearing for the respondent has contended that, none of the appellants were direct employees of the respondent. According to him, on the admission of the appellants themselves, up to a given point of time the appellants had been employees of the designated contractor. In this regard, he has drawn the attention of the court to a reference made for conciliation of industrial disputes arising

between the management of the contractor and the employees of the contractor where the employees of the contractors are the appellants before the court. He has contended that, such conciliation proceedings failed and thereafter no further steps had been taken. He has pointed out that, significantly, the appellants did not raise any industrial dispute although being entitled thereto, thereafter.

9. Learned advocate appearing for the respondent has referred to paragraph 125 of ***Steel Authority of India Ltd and Others (supra)*** and contended that, no provisions of law provides for automatic absorption of contract labour on the appropriate government issuing a notification under section 10 (1) of the Contract Labour (Regularisation and Abolition) Act, 1970. He has pointed out that, there is a distinction between an absorption and regularisation.

10. Relying upon ***2023 Volume 2 Supreme Court Cases 703 (M. P. Power Management Company Limited, Jabalpur versus Sky Power Southeast Solar India Private Limited and Others)*** learned advocate appearing for the respondent has contended that the scope of judicial review of an action taken by an Article 12 authority has been explained. He has pointed out that, since disputed questions of facts are

involved and the dispute surrounds demystifying documents, the writ petition should not be entertained. According to him, documents that have been relied upon on behalf of the appellants to contend that, the labour contractor was a nonentity requires “demystifying” which the writ court should not indulge into.

11. Accordingly, learned advocate appearing for the respondent has contended that, the impugned judgement and order dismissing the writ petition should be upheld.

12. Appellants have sought regularization of their services on the ground that they have been rendering their services uninterruptedly and successfully for a long period of time. In such support of the claim that the appellants are direct employees of the respondent, the appellants have relied upon various documents.

13. By the impugned judgement and order, learned Single Judge has refused to entertain the writ petition inter alia on the ground that, disputed question of facts were involved and that the documents annexed to the pleadings, were not sufficient for the purpose of deciding the issue as to whether any of the appellants were employees of the respondent or not. Learned Single Judge has permitted the appellants to

approach the appropriate forum for resolution of the disputes, if so advised.

14. Indian Oil Employees Union and the management of the respondent entered into a memorandum of understanding dated June 27, 2002 where, demand for regularization of the appellants was discussed. There it had been agreed that 42 contract workers will be engaged on priority basis through labour contractor, over those who were taken later and will be retained. Demand for revision of the daily wages made on behalf of the appellants had been noted. This memorandum of understanding cannot be construed to be a commencement or acknowledgement of a master servant relationship between the appellants and the respondent. In fact, existence of labour contractor and engagement of the appellants through labour contractors had been noted.

15. In support of the claim that the appellants had worked or are working directly under the respondent various documents have been relied upon by the appellants. Each of such documents have to be construed to arrive at a finding as to whether a master and servant relationship ever came into being between the appellants or any of them on one part and

the respondent on the other part and if so at what point of time.

16. Respondent had submitted revised annual return in Form No. 3A(R) and 6A(R) for the year 2005-2006 in respect of 45 persons on March 17, 2010 with the Regional Provident Fund Commissioner, Employees Provident Fund Organization. Provident Fund returns for the period January 1, 1993 to February 28, 2010 had been submitted by the respondent with the provident fund authorities by a writing dated February 22, 2011. The returns so submitted by the respondent have included the appellants herein. Such returns by themselves do not establish that any of the appellants had been or are employees of the respondent during such point of time. Provident Fund payment is an obligation of the principal employer to deposit with the appropriate authorities the entitlement of contract labourers. If at all, such deposit challans would only establish that there was a labour contractor in between the respondent and the appellants.

17. Employees union of the respondent had applied by a writing dated December 28, 2015 for regularization of the jobs of the appellant as casual/contract labourers as the jobs were perennial in nature. Nothing has been placed on record as to

the outcome of such application by the union. Such letter on its own has not established a master servant relationship between the contesting parties.

18. Appellants have relied upon writings dated September 28, 2011, May 5, 2014, and some other writings of such nature where, one of the employees of the respondent had been authorized to receive the cash component of the bonus for disbursement amongst the appellants. Again such documents do not conclusively establish any direct relationship between the appellants and the respondent. These documents merely show that bonuses had been paid to the appellants. Payments of bonus per se does not make any of the appellants direct employee of the respondent.

19. Appellants had been engaged as contract labourer by one M/s L. N. Enterprises. The existence of such labour contractor has been questioned by the appellants. By a writing dated February 24, 2005, the respondent had discussed by way of an inter-office memo, the treatment of the contract labours engaged. There is a writing dated August 25, 2014 where it has been stated that M/s L. N. Enterprises left the site without any prior intimation. The same writing has noted that, there was a valid contract between the respondent

and the contractor and that the contract was awarded on need base and should not be treated as perennial in nature.

20. The inter office note of the respondent dated June 21, 2017 has a description of the labour contractor namely, M/s L. N. Enterprises under whom, the appellants were working as a non-entity contractor. Whether such use of words to describe the functioning of the labour contractor would create a master servant relationship between the appellants and the respondent is highly debatable. Did such note dated June 21, 2017 bring about a contract of employment between the appellants and the respondent, particularly when none of the appellants are recipients or parties to such note, should ideally be decided after allowing the parties to lead oral and documentary evidence on the issue.

21. *Steel Authority of India Ltd (supra)* has been rendered on a reference due to conflict of opinion between different benches. It has considered and answered the issues as to what is the true and correct import of the expression “Appropriate Government” as defined in Section 20(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970, whether the notification dated December 9, 1976 issued under Section 10(1) of the Act of 1970 was valid and whether automatic

absorption of contract labour follows the issuance of a valid notification under Section 10(1) of and the Act of 1970.

22. In the facts and circumstances ***North Bengal State Transport and Corporation (Supra)*** the Coordinate Bench has found the contract between the Transport Corporation and its labour contractor not to be genuine. In such facts and circumstances, the Coordinate Bench has granted relief to the employees concerned.

23. In the facts and circumstances of the present case, therefore, it has to be decided as to whether the contract between the respondent and the labour contractor was genuine or not. Materials placed on record has demonstrated that, there was a conciliation reference initiated under the provisions of the Industrial Disputes Act, 1947 between the workmen of the respondent and the management of the labour contractor namely, M/s L. N. Enterprises. Such industrial dispute had culminated into the conciliation proceedings being closed with a report under Section 12(3) of the Act of 1947 being issued on August 25, 2014. Such writing has noted the existence of the labour contractor. The labour contractor therefore, had existed at least on August 25, 2014.

24. Therefore, it cannot be said conclusively that, the contract between the management and the labour contractor was not genuine. Existence of such labour contractor has been acknowledged by the union in the proceedings under the Industrial Disputes Act, 1947.

25. *MP Power Management Co Ltd (supra)* has noted various authorities with regard to maintainability of a writ petition against an Article 12 authority. It has held inter alia that, where disputed questions of facts are involved and the disputes surrounds demystifying of documents only, Court may relegate the party to the remedy by way of a civil suit. It has also noted that, Article 12 enable a writ court to deal with arbitrary state action in respect of a contract entered into by the State. It has explained what would constitute arbitrariness. It has referred to certain circumstances, noting that other circumstances may exist, which would constitute arbitrariness.

26. In the facts and circumstances of the present case, true and proper construction of documents as well pronouncing on the conduct of the parties are required. Respondent has taken a stand on the documents to contend that none establish a contract of labour between the

appellants and the respondent. Such a stand cannot be classified as arbitrary in the facts and circumstances of the present case.

27. *Nihal Singh and others (supra)* has been rendered in the context of the State of Punjab recruiting personnel under Section 17 of the Police Act, 1861 in order to tackle the large scale disturbance in such State in the 1980s. Section 17 of the Police Act, 1861 has empowered the State to appoint special police officers. In such context, the Court has held that, the principles enunciated in **2006 Volume 4 Supreme Court Cases 1 (State of Karnataka and Others vs. Umadevi (3) and Others)** were not attracted. Consequently, the Court had directed such special police officers to be absorbed to the services of the State.

28. The factual situation obtaining in the present case, does not attract ***Nihal Singh and others (supra)*** or ***MP Power Management Co Ltd (supra)***. The decision of the respondent not to regularize any of the appellants cannot be said to be arbitrary. None of the appellants have been able to establish conclusively that they are employees of the respondent. Moreover, as has been rightly pointed out on behalf of the respondent that, the time period envisaged in

Umadevi (3) and Others (supra) for regularization has not expired from the date of the so called engagement by the respondent of any of the appellants and the filing of the writ petition.

29. In view of the discussions above we have found no merit in the appeal.

30. MAT 2266 of 2023 along with IA No. CAN 2 of 2024 are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

31. I agree.

[MD. SHABBAR RASHIDI, J.]