

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5151 OF 2013**

Indian Oil Corporation Limited

.. Petitioner

Versus

Chandrakant B. Karanjikar & Anr.

.. Respondents

**WITH
INTERIM APPLICATION NO.3565 OF 2023
IN
WRIT PETITION NO. 5151 OF 2013
WITH
CIVIL APPLICATION NO. 1739 OF 2018
IN
WRIT PETITION NO. 5151 OF 2013**

Chandrakant B. Karanjikar

.. Applicant

In the Matter Between

Indian Oil Corporation Limited

.. Petitioner

Versus

Chandrakant B. Karanjikar & Anr.

.. Respondents

...

Mr. K. P. Anilkumar a/w Ms. Priyanka Kumar & Mr. Chinmay Apte, for Petitioner.

Mr. I. M. Khairdi, for Respondents.

...

**CORAM : SANDEEP V. MARNE J.
RESERVED ON : 2 MAY 2024.
PRONOUNCED ON : 9 MAY 2024.**

JUDGMENT :-

1) Indian Oil Corporation Limited has filed this petition challenging the Award dated 21 September 2012 passed by Central Government Industrial Tribunal No.2, Mumbai, allowing Reference No. CGIT No.2/1 of 2007 filed by the First Respondent and directing Petitioner to regularize services of Respondent as a permanent worker on the post of Junior Operator (Field) with effect from December 1986 and to pay him the difference in salary and other allowances and consequential benefits of a permanent employee.

2) Facts of the case in brief are that Petitioner is a Public Sector Undertaking of the Government of India under the administrative control of Ministry of Petroleum and Natural Gas. It is engaged in the business of refining, storing and marketing of petroleum products. It has one Terminal at Sewree, Mumbai, where the activity of storing, supplying and distributing of petroleum products is carried out. According to the Petitioner, for various miscellaneous jobs such as stacking, de-stacking of filled/empty Lube Barrels/ Drums, other materials etc. contracts are awarded to third parties. That Respondent No. 2 - B.K. Shroff (Pvt.) Ltd. is one such contractor.

3) It is Petitioner's case that Respondent No.1 was initially engaged through the contractor M/s. West Coast Carriers and thereafter is engaged through Respondent No.2-Contractor. The said contractor was awarded the work of connecting and disconnecting of flexible hoses from Tank Truck manifold to the vessels manifold through the bunkering operation. That the necessary tools and other materials for carrying out such work were owned and supplied by the contractor. That the work of the First Respondent was throughout supervised by his own contractors.

4) Petroleum Employees Union filed Writ Petition No.2277 of 1999 representing *inter alia* that Respondent No.1 is seeking abolition of contract system in respect of work contracted out to the second Respondent. The Writ Petition was disposed of by Division Bench of this Court by Order dated 28 October 1999 directing the appropriate authority under the Contract Labour (Regulation and Abolition) Act, 1970 to deal with the question of abolition of contract labour as a reference, which was directed to be decided after hearing the concerned parties. In pursuance of the Order passed by this Court, the Central Advisory Board deputed officer to visit the premises of Petitioner at Sewree and who submitted report dated 13 January 2001 stating that Respondent No.1 was working as employee of the contractor. According to the Petitioner on the basis of the said report, the Central Advisory Contract Labour Board finally disposed of the Reference by Order dated 18 December 2001.

5) Respondent No.1 approached Assistant Labour Commissioner (C) Mumbai seeking regularisation of his services. His demand was admitted in conciliation and after failure of conciliation proceedings, Order dated 18 December 2006 was passed making a Reference to Central Government Industrial Tribunal (CGIT), which was registered as Reference No.CGIT-2/1 of 2007. First Respondent filed his Statement of Claim, which was resisted by Petitioner by filing written statement. Respondent No.1 examined himself as a witness. Petitioner examined Ms. Yvonne Rodricks, Manager (Terminals) as its witness. CGIT passed award dated 21 September 2012 allowing the Reference and directing Petitioner to regularise services of Respondent No.1 on the post of Junior Operator (Field) with effect from December 1996 and to pay the difference in salary and allowances and consequential benefits of a permanent employee.

6) Petitioner has challenged the Award dated 21 September 2012 in the present Petition. By Order dated 12 March 2014, Petition has been admitted and this Court granted interim protection in regard to termination of services of Respondent No.1. When Respondent No.1 complained about non-payment of appropriate wages, this Court granted liberty to him to file appropriate application. Respondent No.1 has accordingly filed Civil Application No.1739 of 2018 for deposit of amount of Rs.1,76,48,976/- towards difference of wages. Along with that Application he has produced salary slip issued by Respondent No.2 for payment of salary of Rs. 11,358/- and Rs.12,678/- for months of April and May 2018 respectively. He has also produced salary slip of a regular employee Mr. Murlidhar More for March 2018 showing payment of gross salary of Rs.1,06,045.31/-. The said Civil Application is pending.

7) Appearing for Petitioner, Mr. Anilkumar the learned counsel would submit that the CGIT has erred in directing regularisation of Respondent No.1 in services of IOCL ignoring the fact that Respondent No.1 is the employee of contractor-Respondent No.2. That CGIT has erroneously held that contract executed by Petitioner in favour of Respondent No.2 is sham or bogus or mere camouflage. That no evidence was produced by First Respondent to prove that any wages are paid to him directly by IOCL or that his work was supervised by IOCL or that any disciplinary control was exercised upon him by IOCL. That the first Respondent did not even perform duties for full day and merely worked for few hours in a day. That therefore it is erroneous on the part of CGIT to hold that Respondent No.1 is the employee of IOCL. Mr. Anilkumar would further submit that the report of the Central Advisory Board conclusively proved that Respondent No.1 is the worker of contractor. That the Order passed by Central Advisory Contract Labour Board based on the said report has attained finality on account of failure on the part of first Respondent to challenge the Order dated 18 December

2001. That in the light of the Order passed by the Central Advisory Board, it was not open for CGIT to record a contradictory finding that First Respondent is employee of IOCL.

8) Mr. Anilkumar would further submit that the First Respondent gave specific admissions in the cross examination that he was employee of Respondent No.2. Relying on judgment of this Court in ***Sarva Shramik Sanngħ Vs. Indian Oil Corporation Ltd. & Anr.*** Writ Petition No.1673 of 2005 decided on 19 August 2006, Mr. Anilkumar would contend that Respondent No.1 is estopped from contending that contract is not genuine or sham.

9) Mr. Anilkumar would contend that Respondent No.1 erroneously claimed that his name was included in the list of casual laborers. That the error in including his name in the said list was demonstrated before the Industrial Court. Mr. Anilkumar would rely upon judgment in ***Municipal Corporation of Greater Mumbai Vs. K. V. Shramik Sangh And Others.***¹, ***Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of T.N. And Others.***² and ***Surinder Prasad Tiwari Vs. U. P. Rajya Krishi Utpadan Mandi Parishad and Ors.***³

10) *Per contra*, Mr. Khairdi the learned counsel appearing for Respondent No.1 would oppose the Petition and support the award passed by CGIT. He would submit that the First Respondent has been working with IOCL since 1984 and has by now rendered 40 long years of service. That his services are being exploited by paying him substantially lesser wages despite performing same work as that of other regular employees of IOCL. Inviting my attention to the list of casual workers annexed along with statement of claim, Mr. Khardi would submit that all other workers in the said list, who were contemporaneously working with Respondent

¹ (2002) 4 SCC 609

² (2004) 3 SCC 514

³ (2006) 7 SCC 684

No.2 have been regularised in service and Respondent No.1 is discriminated. Inviting my attention to the Additional Affidavit filed by Petitioner, he would submit that a lame attempt was made to prove erroneous inclusion of name of three workers in the list viz. R. B. Walmik, R. L. Yadav and C. B. Karachakar (Respondent No.1). That the other two employees Shri. R. B. Walmik and R. L. Yadav are regularized in service, once again showing that Respondent No.1 is selected for hostile discrimination.

11) Mr. Khairdi would further submit that the nature of work performed by Respondent No.1 is perennial in nature which is clear from the fact that he is performing the said job for the last 40 long years. That it is impossible to believe that a contractor would retain same employee for such a long time. That thus the arrangement of paying wages to Respondent No.1 through contractor is deliberately made to avoid responsibility towards Respondent No.1. Mr. Khairadi would pray for dismissal of the Petition.

12) Rival contentions of the parties now fall for my consideration.

13) The issue involved in the present Petition is about correctness of Award passed by CGIT directing regularization of services of Respondent No.1 on the post of Junior Operator (Field) with effect from December 1996. The CGIT encountered a situation where engagement of Respondent No.1 was made through Contractor (Respondent No.2). Therefore, Industrial Court has decided the issue as to whether the contract is sham, bogus or camouflage.

14) Perusal of the statement of claim filed by the First Respondent would indicate that he did not seek any relief of contract being sham or bogus. The prayers sought for in the statement of claim are as under:

- a) *This Hon'ble Tribunal may be pleased to hold and declare that action of the management in not regularizing his services as permanent workman of the management in the post of "Junior Operator (Field)" with effect from 05.12.1986 is illegal and unjustified.*
- b) *This Hon'ble Tribunal may be pleased to direct the management to confer upon the workman the status and privileges of permanent workman with effect from 05.12.1986 with all consequential benefits, and*
- c) *Pending the hearing and final disposal of the Reference this Hon'ble Tribunal be pleased to direct the management to continue to engage the services of the workman on the post held by him.*
- d) *For such further and other reliefs as the nature and circumstances of the case may require.*

15) Though no specific prayer was sought that the contract is sham or bogus, it appears that on account of defence taken by Petitioners, issue was framed as to whether Respondent is a contract employee. The issues framed by CGIT are as under:

1. *Does second party prove that he can claim permanency in the employment of first party*
2. *Does first party prove that second party is a contract employee and he cannot claim permanency?*
3. *Whether decision of first party in not regularizing concerned workman though his name appeared in the approval list, is justified?*
4. *What order?*

16) The CGIT has gone into the issue of contract being sham and bogus and held in para 15, 16 and 18 as under:

15. *The ratio laid down by Hon'ble Apex Court in this recent ruling, is squarely attracted to the set of facts of the case at hand. On the other hand the above rulings cited on behalf of the first party are not attracted to the set of facts of the present case. It is contended by the workman that he was working with the first party initially as Cook-cum- attendant at the guest house since 1984 and since 1986 he is working at Sewri as Jr. Operator. According to him though he is doing work continuously for number of years, the management refused to make him permanent by showing him as a contract labourer. According to the workman the said contract labourer. According to the workman the said contract is sham and bogus and infact he is employee of the first party and the first party has shown him*

contract worker merely to deprive him from getting the benefit of permanency. It is also the case of the workman that some workmen working with him were made permanent. He has also given the list of those workmen who were regularised in the services of first party as Junior Operators (field). In the above ruling the Hon'ble Apex Court has taken cognizance of such type of exploitation.

16. In this backdrop I hold that the labour contract of M/s. Shroff & Co. is sham and bogus and mere camouflage in order to deprive the workman from getting the benefits of permanency. These workmen are working for years together for minimum wages which are not sufficient even to meet the two ends of the family whereas the permanent employee who are doing the same work get much more pay and allowance and other facilities from the department.

18. In the light of above discussions it is clear that the labour contract of M/s. Shroff & Co. is held to be sham & bogus. The workman herein is held to be the employee of the first party. Therefore the action of the first party in not regularizing his services as permanent worker is not justified. Thus it needs no further discussion to record me negative finding on this issue no.3. Accordingly I allow the reference and proceed to pass the following Order:

17) Thus, for the purpose of considering the prayer of Respondent No.1 for permanency, CGIT also decided the issue as to whether Respondent No.1 was a contract employee or not. In my view, this was necessary in the light of specific defence raised by Petitioner that Respondent is a contract employee. After holding that contract is sham and bogus, CGIT proceeded to hold that Respondent No.1 is the employee of IOCL.

18) In previous round of litigation Writ Petition No.2277 of 1999 was filed by Respondent No.1 along with one more workman seeking following prayers:

a) This Hon'ble Court be pleased to declare that the Petitioners are regular employees of the Respondent No.1 and that they are entitled to have the same salary and wages and service conditions as to salary, wages and service conditions given to the permanent employees from the date of filing of this Petition.

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus and/or a writ in the nature of Mandamus directing the Respondents Nos. 1 to absorb the Petitioners in the posts where they have been working presently and pay them their regular salary and wages and service conditions which are given to the employees employed by the Respondents on regular basis, from the date of filing of this Petition.

- c) *That pendign the hearing and final disposal of the Petition, the Respondent No.1 be restrained from terminating the services of the Petitioners and the Respondents be ordered and directed to pay Rs.1,000/- per month on adhoc basis to the Petitioners.*
- d) *For interim and ad-interim relief in terms of prayer (c) above:*
- e) *For the cost of the Petition.*

Thus a specific prayer was made in Writ Petition No. 2277 of 1999 that Respondent No.1 was regular employee of IOCL and that he was entitled to have same salary and wages and services conditions as given to permanent employees.

19) Writ Petition No. 2277 of 1999 was disposed of by this Court by Order dated 28 October 1999 which reads thus:

1. *Heard the learned Counsel for the parties. Rule. Rule made returnable forthwith by consent.*
2. *After hearing the learned Counsel for the parties, we pass the following order:-*
 - i) *Respondent No. 3 Union of India is directed to refer the question of abolition of contract labour in respect of the work performed by the employees listed in Exhibit 'A' to the Petition. The said reference shall be made within four weeks from today.*
 - ii) *The Central Advisory Board is directed to hear the representatives of the parties hereto and submit their report to the Central Government within three months from the date of the reference under clause (i) above.*
 - iii) *The Central Government is directed to take decision under section 10 of the Contract Lbour (R&A) Act, 1970 in respect of the work performed by the persons listed in Exhibit 'A' to the Petition, within four weeks from the date of the receipt of the report of the Central Advisory Board.*
 - iv) *Till the decision is taken, as directed above, Respondent Nos. 1 and shall not remove the persons presently in employment and mentioned In Exhibit 'A' to the Petition, and shall continue them in employment on the same terms and conditions. However, this restriction shall not apply in case of misconduct, violent conduct or any other similar reasons.*
3. *The Petition is disposed of in the aforesaid terms and Rule is made absolute accordingly with no order as to costs.*
4. *Personal Secretary is permitted to issue an ordinary copy of this order.*
5. *Parties to act on an ordinary copy of this order duly authenticated by the Associate of this court.*

20) As directed by this Court, the Central Advisory Board requested Regional Labour Commissioner (Central) Mumbai to submit a factual report. Accordingly, the Regional Labour Commissioner visited the establishment of IOCL at Sewree Terminal and submitted detailed report recording submissions of the workmen/union as well as the management. The finding recorded by Regional Labour Commissioner in his report are as under:

FINDINGS

I visited the establishment of Sewree Terminal of Indian Oil Corporation Limited on 31st July, 2000 and also the dock area of Mumbai Port Trust where the actual bunkering operation (supply of fuel to Ships / Sea bound vessels) was undergoing.

During the visit of Shri C.B.Karachkar was found to be present at the Terminal, who informed that he is engaged by the Contractor as and when required for bunkering, filing of MLO drums, etc. Shri Sandeep Chalke, the second employee was found to be absent.

It was noticed that the bunkering was being carried out by M/s West Coast Carriers, Mumbai in Mumbai Docks. The hose connections were already made. On further enquiry it is noted that the services of the Petitioners are required during the bunkering for connecting / disconnecting the flexible hoses from Tank Truck Manifold to the Ship's manifold. It takes about two to four hours to carry out normal bunker. No Officer/ Supervisor of Indian Oil Corporation were present during the bunkering operation. The work was supervised by the Supervisor of M/s. West Coast Carriers.

It is a fact that there is no enough work for the contract labour engaged by M/s. West Coast Carriers in their contract work even though most of the works are need-based to be attended to by the contract workers as and when the exigency arises except bunkering which is of perennial nature but the total volume of work is very limited not even coming to an average of one hour per day. As such, the question of abolishing this contract work does not arise. The workmen are paid minimum wages prescribed and also extended with the benefits of PF and ESI

Actually, the writ petition no. 2277 of 1999 before Hon'ble Bombay High Court was filed by Shri C.B. Karachkar and Shri Sandeep B. Chalke after writ petition no. 2114 of 1996 was disposed of by the Hon'ble Bombay High Court regularizing some casual labour in the services of M/s. Indian Oil Corporation during September, 1999. It is a fact those casual labour were listed on "Approved List of Casual Panel (ALCP)" and continued to work as casual labour I M/s IOCL Ltd. since 1981. It is also a fact that these two workers were all along contract labour and were not on the "Approved List of Casual Panel" even though they are contending that their names were also listed as casual labour as they have been working since 5.12.1985. If it is the contention of these two workmen that they are working since

5.12.1985 and their names were not brought in the "Approved List of Casual Panel", it is for the Hon'ble Bombay High Court to decide whether it is a fact or not and what relief can be given to these two workmen in case there is a mistake on the part of the management in not including their names in the said Panel. It has nothing to do with the Contract Labour (Regulation & Abolition) Act, 1970 and also prohibiting the contract work because also these two workers are claiming only regularization on par with the casual labour regularized as per the orders of the Hon'ble Bombay High Court in writ petition no. 2114 of 1996.

21) Based on the report submitted by the RLC, Central Advisory Contract Labour Board in its meeting held on 22 November 2001 gave following decision:

ITEM NO. 3: Order dated 28.2.1999 of Hon'ble Mumbai High Court in W.P. No. 2277 of 1999 filed by Chandrakant B. Karachakar & another Vs. Indian Oil Corporation and others. (S-16014//9 LW16014/72/00-LW

Both the representatives of the workers and management were present and heard. The management's case was that those who went to the court and were regularized were on the 'Approved list of Casual Panel' whereas the two petitioners were never on the approved list and hence not considered for regularization. The petitioner's case was that they were on the Approved list as they had been working since 5.12.1986 and therefore should be regularized. In view of the fact that the claim of the petitioners is based on the ground that they were casual workers the Board decided that this case does not come within the purview of the Contract Labour (Regulation & Abolition) Act, 1970 and is out of their jurisdiction and hence, no remedy lies. The Board recommends to the Government accordingly.

22) Thus the Board refused to consider the claim of Respondent No.1 for regularization of his services on the ground that the same did not come within the purview of Contract Labour (Regulation and Abolition) Act 1970. That the contention of Mr. Anilkumar that the claim of Respondent No.1 as being employee of IOCL attained finality on account of decision of the Board dated 22 November 2001 does not appear to be correct. In my view therefore neither Order passed in Writ Petition No.2277 of 1999 nor the Order of the board dated 22 November 2001 determined either status of Respondent No. 1 or his claim for regularization in any manner. Respondent No.1 was therefore justified in approaching the RLC and in

raising reference before CGIT as the Board held that relief or regularization was not in its jurisdiction.

23) Coming to the merits of decision of CGIT, it is seen that payment of wages to First Respondent through Respondent No.2 is an admitted position. However, it is the contention of the First Respondent that the said arrangement was deliberately made to avoid labour related responsibility by IOCL. In fact, in his evidence, First Respondent deposed that his initial engagement was in September 1984 as Cook-cum-Bearer in the Guest House of IOCL and that his colleague Shri. Saleem Shaikh who was also worked as Cook-cum-Bearer was made permanent. Thus it appears that the initially first Respondent was direct employee of IOCL. He further deposed that he was then posted in Sewree Terminal as Khalashi [latter re-designated as Junior Operator (Field)] in December 1985. It appears that after being posted as Junior Operation (Field) at Sewree Terminal, the arrangement of payment of wages through contractor began. According to Petitioner, first Respondent's earlier contractor was M/s. West Coast Carriers, who was latter replaced by Respondent No.2. While Petitioners contend that the job of connecting and disconnecting flexible hoses from Tank Truck manifold to the vessels manifold during bunkering operation is performed by contractors, on the contrary Respondent No.1 contended that the said work was also performed by other casual labourers who were regularised in service.

24) Along with his statement of claim Respondent No.1 relied on letter dated 14 July 1986 of terminal manager in respect of 14 persons which included the name of Respondent No.1 at serial No. 14 the letter reads thus:

INDIAN OIL CORPORATION LIMITED

(Marketing Division)

Western Region

CHIEF PERSONNEL MANAGER

Ref. ST/CL/11

WESTERN REGION

July 14, 1986

Attn Shri H. Sak...**Sub: List of Casuals**

Please refer to your IM No. WR/P&A/1121/CL dtd. 24.6.86 on the above subject. As desired by you we give hereunder the details of Casuals.

Sr.No.	Name of Person	Employee Exchange/ Listed Casual	Date from which working
1.	Mr. MN Prabhulkar	listed	01.06.82
2.	Mr. SK Poojari	listed	01.03.84
3.	Mr. MA More	Emp. Exchange	01.03.83
4.	Mr. SE Bhagat	listed	20.12.81
5.	Mr. SL Rawool	Emp. Exchange	01.03.83
6.	Mr. SA Ghule	Emp. Exchange	01.03.83
7.	Mr. RG Yadav	listed	02.10.81
8.	Mr. PL Kondey	listed	27.11.81
9.	Mr. RM Shiverkar	listed	09.01.82
10.	Mr. RB Walmik	listed	10.08.83
11.	Mr. Amarnath G. Rai	listed	20.10.81
12.	Mr. RL Yadav	listed	21.07.82
13.	Mr. BR Kadam	Emp. Exchange	01.03.83
14.	Mr. Chandrakant Balu Karachakar	Listed	05.12.85

This is for your information.

Sd/-

TERMINAL MANAGER

25) Petitioner has sought to explain the said letter by filing an Additional Affidavit, in which it is contended as under:

“2. I say that the list which was forwarded on 14.07.1986 by an Officer of Operating Unit contained the names of those persons also who were not part of Approved List of Casual Panel. Noticing that the list was wrong, a memo was issued on 21.08.1986 itself by the Regional Office that the said

list contains the names of the persons who are not casual workers and pointing out the mistake and directing the officer who made the list to remove from it the names of the persons who are not selected as casual employees. Five names were mentioned in the said list dated 14.07.1986 wherein two names were shown wrongly and three other names were not casual workers at all. The Respondent No. 1 Mr. Chandrakant B. Karanjkar was one of the persons whose name was incorrectly added in the said list. This is mentioned in the correspondence dated 21.08.1986 itself. Annexed hereto and marked as Annexure-1 is the copy of the letter dated 21.08.1986 with the list of casual workers. In fact, all along the Respondent No. 1 a contract worker.”

26) Along with the Additional Affidavit, Inter Office Memo dated 21 August 2006 is enclosed in which it is pointed out that names of 3 employees Shri. R. B. Walmik, R. L. Yadav and C. B. Karachakar (Respondent No.1) was not found in the empaneled list of casual labourers. However Respondent No.1 has filed Affidavit pleading that Mr. R. B. Walmik and R. L. Yadav are also regularized in service.

27) In my view it is not necessary to delve any deeper into the issue as to whether Respondent No.1 is/was direct casual labour of IOCL. As observed above, his initial engagement appears to be directly with IOCL. His later engagement through contractor is not in dispute as he has admitted at various places that he received salary through Respondent No.2. The issue therefore is whether the arrangement of engagement through Respondent No.2 is sham or bogus. In his cross-examination Respondent No.1 has admitted that he is serving Respondent No.2 and that he was appointed by Respondent No.2 for its work.

28) The law relating to existence of employer-employee relationship is now settled by the Apex Court in its judgment in **Balwant Rai Saluja V/s. Air India Limited**⁴ in which the Apex Court has laid down six tests to be satisfied for showing existence of employer employee relationship the Apex Court held as under:

⁴ (2014) 9 SCC 407

“65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;*
- (ii) who pays the salary/remuneration;*
- (iii) who has the authority to dismiss;*
- (iv) who can take disciplinary action;*
- (v) whether there is continuity in service; and*
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.*

As regard extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case.”

29) The judgment of ***Balwant Rai Saluja*** is reiterated by the Apex Court in ***Bharat Heavy Electrical Ltd. Vs. Mahendra Prasad Jakhmola and Ors.***⁵, Mr. Anilkumar has relied upon judgment in ***Workmen of Nilgiri Coop. Mkt. Society Ltd.*** where again the test laid down are as under:

“37. The control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result : (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject.”

30) Perusal of the Award of the CGIT would indicate that it has not considered the issue of satisfaction of any of the above tests for holding employer-employee relationship between IOCL and Respondent No.1. However, if the above six tests applied to the facts of the present case, it is seen that Respondent No.1 satisfies some of them, if not all. He was initially appointed by IOCL directly and later converted as contract worker. There is no dispute to the position that his salary/remuneration is paid by Respondent No.2. In fact, he has placed on record his salary slips issued by the contractor. There is nothing to indicate that IOCL ever

⁵ (2019) 13 SCC 82.

took any disciplinary actions against Respondent No.1. He has been continued in service despite change of contractors. It cannot be stated that IOCL does not exercise any control over first Respondent, who has been working with them for the last 40 odd years. In addition to the above tests, name of Respondent No. 1 was also included in the list of casual labourers. Therefore, though Respondent may not satisfy all the 6 tests, reflection of his name in the list of casual labourers coupled with the fact that he has rendered 40 years of service, in my view, makes him entitled to the benefit of regularization. Respondent No. 1 is now at the fag end of his service. However, this is being done considering the exceptional circumstances of the present case, where name of Respondent No. 1 was reflected in the list of casual labourers and all other casual labourers contemporaneously working with Respondent No. 1 have been absorbed in IOCL's service. This shall not be treated as a precedent for other contract workers, whose names were never reflected in any list of casual labourers.

31) Having held that Respondent No. 1 is entitled to be regularized in service, the next issue is about the date from which the benefits of regularization is to be conferred on him. CGIT has granted regularization to him from December 1986 and with directions to pay him the difference in salary and other allowances and consequential benefits of a permanent employee. In my view, an exception is being made in the present case only on account of reflection of name of Respondent No. 1 in the list of casual labourers despite he not satisfying all the 6 tests for establishing employer-employee relationship. Therefore, granting the benefit of regularization from December 1986, when the Reference was made to CGIT in the year 2007, would not be appropriate. In my view therefore, Respondent No. 1 can be granted the benefit of regularization/permanency w.e.f. 1 January 2007, which is the year when Reference was registered in CGIT. This is being done considering the peculiar facts and circumstances of the case.

32) Writ Petition accordingly partly succeeds. Award dated 21 September 2012 passed by CGIT in Reference No. CGIT-2/1/2007 is modified directing that Petitioner IOCL shall grant the benefit of regularization/permanency in its service to Respondent No. 1 w.e.f. 1 January 2007 with consequential benefits of difference of wages, pay-fixation, seniority, etc. The consequential monetary benefits arising out of regularization/permanency w.e.f. 1 January 2007 shall be paid to Respondent No. 1 within 8 weeks. With the above directions, Writ Petition is disposed of. Rule is made partly absolute in the above terms. There shall be no order as to costs.

33) In view of disposal of Writ Petition, Interim Application No.3565 of 2023 and Civil Application No. 1739 of 2018 does not survive. The same also stands disposed of.

[SANDEEP V. MARNE J.]