

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211 (02 cases)

CM-14766-CWP-2023 in/&
(1)CWP-13935-2018 (O&M)
Date of Decision :22.02.2024

Satyawan Singh and others

...Petitioners

Versus

State of Haryana and others

....Respondents
(2)CWP-14276-2018 (O&M)

Subhash Verma and others

...Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Nilesh Bhardwaj, Advocate and
Mr. Akhilesh Barak, Advocate for the petitioners
in CWP-13935-2018.

Mr. Harish Bhardwaj, Advocate & Ms. Jasleen, Advocate
for the petitioners in CWP-14276-2018.

Mr. Tapan Yadav, DAG, Haryana.

Mr. S.P. Arora, Advocate for respondents No.7 to 17.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petitions, grievance of the petitioners is qua the order dated 27.04.2018 (Annexure P/13) by which, qua the registration and welfare of workers, certain works have been entrusted to the various wings of the Labour Department, Government of Haryana.

2. Learned counsel appearing for the petitioners submits that the said distribution of work has been done contrary to the provisions of Building and Others Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred as '1996 Act') as under Chapter-III which deals with the appointment of Registering Officers and appointment of the such Registering Officers has to be notified in the official Gazette whereas, without following said process by an impugned executive order dated 27.04.2018 (Annexure P/13), the petitioners have been asked to do certain works, which is arbitrary and illegal.

3. Learned counsel for the respondent-State submits that under the 1996 Act, there are two separate duties to be performed which includes registration of the establishment as well as registration of the building workers, who are to be treated as beneficiaries as envisaged under Chapter III and Chapter-IV respectively. By the impugned notification dated 27.04.2018 (Annexure P-13) work required to be performed under the two chapters mentioned hereinbefore have been bifurcated and petitioners have only been directed to perform the duties of Chapter-IV qua registration of the building workers, who are to be treated as beneficiaries, which can be done by an executive order only.

4. Learned counsel for the respondents further submits that notification qua the Registering officers as envisaged under Section 6 of the 1996 Act has already been notified, copy of which has been appended with the present petition as Annexure P/3 and with regard to the duties to be done under Section 12 of the 1996 Act, the same can be entrusted by an executive order hence, as the petitioners have been given duties of registration of building workers as envisaged under Section 12 of the 1996 Act, which

does not need any registration, no grievance can be raised by the petitioners qua the impugned order Annexure P/13.

5. Learned counsel for the petitioners submits that notification of the Registering Officers under Section 12 of the 1996 Act is also must keeping in view the order passed by the Hon'ble Supreme Court in **Writ Petition (Civil) No.318-2006 tilted as National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India and another, decided on 19.03.2018**. Learned counsel for the petitioners further submits that direction No.3 in para-78 of the said judgment, makes it obligatory upon the State to register the appointment of the Registering Officers of the establishment as well as construction workers hence, non-issuance of Gazette notification so as to appoint Registering Officers qua construction workers is bad and contrary to the judgment of the Hon'ble Supreme Court of India in **National Campaign committee (supra)**

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It may be noticed that the petitioners are the employees of the department of Labour, Haryana working on a particular post. The question which arises is whether decision taken by the department vide order dated 27.04.2018 (Annexure P/13) is valid or not.

8. A bare perusal of the 1996 Act would show that for the registration of the establishment under Section 6 requires notification in the official Gazette qua the name/designation of the Registering Officers whereas, for conducting registration of the building workers as envisaged under Section 12 of the 1996 Act the competent Board is required to authorize the officer to do so. The relevant Section 6 as well as Section 12

of the 1996 Act are as under:-

6. Appointment of registering officers.-The appropriate Government may, by order notified in the Official Gazette,-

(a) appoint such persons being Gazetted Officers of Government, as it thinks fit, to be the registering officers for the purposes of this Act; and

(b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Act.

12. Registration of building workers as

beneficiaries.-(1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together With such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of tile Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the

appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.”

9. A bare perusal of the reproduction makes it clear that for complying with the requirements of Section 6 of 1996 Act, notification is required to designate the Registering Officer, which is qua the registration of establishment but for authorizing an officer to perform duties under Section 12 of the 1996 Act, no gazetted notification is required. For duties required to be performed under Section 12 of 1996 Act, Board can nominate an officer by passing appropriate resolution, which will suffice the requirement of Section 12 of the 1996 Act.

10. Learned counsel for the petitioners has conceded the fact that registration as envisaged under Section 6 of the 1996 Act for notifying the Registering Officers for registration of the establishment the required notification has already been issued by the Government. But prejudice being shown by the petitioners is that even qua registration of the building workers, which is to be done under Section 12 of the 1996 Act, there has to be a notification and no simple executive order can be passed authorizing any officer to do so.

11. This assertion of the petitioners is not borne out keeping in view the provisions of Section 12 of the 1996 Act where the board has been given power to appoint any authorised officer for the registration of the building workers as beneficiary. Once, while framing the 1996 Act, notification in the official Gazette qua registration of the workers has not been envisaged under Section 12 of the 1996 Act, the petitioners cannot

raise any grievance that the same should also be done by way of notification by the Government and not by an executive order. By the impugned order dated 27.04.2018 (Annexure P/13), the Government in its wisdom has decided to authorize competent officer in the Labour Department to perform certain duties qua registration of workers and their welfare as well as collection of cess and the said authorisation will take place by way of an impugned order is qua the registration of workers, which is envisaged under Section 12 of the 1996 Act. As Section 12 of the 1996 Act does not involve notification in official Gazette. An authorisation by executive order dated 27.04.2018 (Annexure P/13) of a particular officer of the Labour department to perform duties as envisaged under Section 12 of the 1996 is to be treated as valid.

12. Argument of the learned counsel for the petitioners that impugned order dated 27.04.2018 (Annexure P/13) is violative of direction given in para-78(3) by the Hon'ble Supreme Court of India in **National Campaign Committee (supra)**, the same is also incorrect. Relevant para para-78(3) of the judgment is as under:-

“The State Government and UTAs must appoint Registering Officers for registration of establishment and construction workers. This is a critical aspect of the implementation of the BOCW Act as well as the Cess Act.”

13. A bare perusal of the above would show that only direction given is to appoint a Registering Officer for registration of establishment and construction workers. It has not been mentioned that both has to be done by issuing a notification in the official Gazette. Said direction means that action needs to be taken for approval as per the 1996 Act. The 1996 Act provides that for the registration of establishment, the Registering Officers

are to be notified in the official Gazette which has already been done but for the registration of the workers as envisaged under Section 12 of the 1996 Act, the same is to be done as per the discretion of the Board after taking approval from the Government. In the present case, the said process as envisaged under the 1996 Act has already been followed while passing impugned order dated 27.04.2018 (Annexure P/13) qua the assigning of duties to certain officer of the Labour department as per Section 12 of 1996 Act, which deals with registration of workers, hence, the argument of the learned counsel for the petitioners that the impugned order Annexure P/13 is violative of the judgment of the Hon'ble Supreme Court of India in *National Campaign Committee (supra)*, is incorrect and cannot be accepted.

14. Learned counsel for the petitioners submits that two different authorities cannot be given work as envisaged under Sections 6 as well as 7 and Section 12 of the 1996 Act. Learned counsel for the petitioners further submits that the officers appointed under Section 6 of the 1996 Act are required to do all the work envisaged under the 1996 Act and power being exercised under Section 12 of the 1996 Act to another set of officers is arbitrary and illegal.

15. A bare perusal of Section 6 of the 1996 Act would show that the word use in Section 6 is 'Registering Officer' whereas, the word use in Section 12(2) of the 1996 Act is 'Officer' only. Once, officer required to perform the duties under section 6/7 of 1996 Act and Section 12 of the 1996 Act have to perform different duties, it is within the jurisdiction of the department to evolve a method for the smooth implementation of 1996 Act.

Further, assertion of the learned counsel for the petitioners that the same

officer, who has been appointed as Registering Officer should also perform duties as envisaged under Section 12(2) of the 1996 Act cannot be accepted as the same is within the jurisdiction of the Government and the petitioners have no right to decide the said cause of action.

16. It may be noticed that it is the discretion of the Government that whether it wants the same officer to perform the work or two different officers to perform the duties under Sections 6/7 of the 1996 Act as well as Section 12 of the 1996 Act as the same is permissible under the 1996 Act. The Government is well within its jurisdiction to decide which authority will perform the work better keeping in view the duties to be performed under Section 6/7 of the 1996 Act as well as Section 12 of the 1996 Act. Once, the Government has decided two different authorities to perform the two different duties as envisaged under Section 6/7 and Section 12 of the 1996 Act keeping in view the background of the officer concerned, who has been asked to perform the duties, this Court will be the last person to interfere in the same especially, when no valid prejudice caused to the petitioners has been brought on record.

17. Keeping in view the facts and circumstances noticed hereinbefore, no ground for interference by this Court is made out and the present writ petitions are accordingly dismissed.

18. Civil Miscellaneous application pending, if any, is also disposed of.

19. A photocopy of this order be placed on the file of connected cases.

February 22, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No