



2024:DHC:2757



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 19th March 2023**
+ **W.P.(C) 6799/2007**
MANGEMENT OF CPWD Petitioner
Through: Mr. Ruchir Mishra, Mr. Mukesh Kr.
Tiwari and Ms. Reba Jena Mishra,
Advocates.
versus
ANAND KUMAR GAUTAM & ANR. Respondents
Through: Ms. Mugdha and Mr. Deepak Kumar
Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER
CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“i. issue a writ of certiorari, or any other writ, order or direction quashing the award dated 21.2.2007 passed by the Ld. Central Government Industrial Tribunal cum Labour Court in ID No.74/2001.
ii. pass any other further order which this Hon'ble Court may deem fit in the facts and circumstances of the case.”

2. The facts for the instant petition are as follows:

- The respondent herein, i.e. Anand Kumar Gautam and Mani Lal Sah were contract laborers engaged by the petitioner on 8th December 1995 and 14th April 1996 respectively as Lift Operators, through the contractor management i.e., M/s Kiran Elevator Services.
- The workmen, through their union, sent a notice to the petitioner seeking regularization of their services. Pursuant to which they filed a



claim before the Assistant Labour Commissioner, seeking initiation of conciliation proceedings as well as directives to the petitioner to regularize or absorb the workmen into the establishment. The petitioner was summoned to participate in the conciliation proceedings, wherein it failed to reach a resolution to the dispute therefore, did not regularize the workmen within the establishment. Thereupon, the conciliation officer referred the dispute to the Tribunal *vide* reference no. L-42012/213/2003-IR (CM-II).

c) Pursuant to completion of the proceedings before the learned Tribunal, the impugned award dated 21st February 2007 was passed in favor of the respondent.

d) Aggrieved by the aforesaid award, the petitioner has filed the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is contrary to the well-settled position of law that the writ Courts, must typically refrain from issuing directives for absorption, regularization, or permanent continuance, unless the initial recruitment process was conducted as per due process of law and the same has been upheld by the Hon'ble Supreme Court of India in the case of ***Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1***,

4. It is submitted that the learned Tribunal failed to recognize that the workmen were employed by the contractor, and the petitioner had no involvement either in their selection or supervision.

5. It is submitted that the impugned award is averse to the settled



position of law that individuals employed on a contract basis for a specific period of time are not eligible to seek regularization.

6. It is submitted that the learned Tribunal had overlooked the factum that as per notification dated 31st July 2002, the government did not remove contractual labour lift operators employed with CPWD. Hence, employing contractual labour for the operation of lifts in CPWD establishments is legal.

7. It is submitted that the learned Tribunal in the impugned order failed to appreciate the averments of the petitioner.

8. It is further submitted that the impugned award suffers from illegality and errors apparent on the face of record.

9. In light of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed and reliefs as sought may be granted by this Court.

10. *Per Contra*, learned counsel for the respondents vehemently opposed the instant petition submitting to the effect that the instant writ petition is not maintainable under the law as the petitioner failed in raising any substantial legal question before this Court.

11. It is submitted that the petitioner has sought judicial review of this Court with regard to the factual findings of the learned Tribunal despite the fact that the Tribunal has passed the impugned award after perusing the pleadings on record as well as applying its judicial mind to it. Hence, the impugned order does not suffer from any illegality.

12. It is contended that the respondents were continuously working since 1995-96 without interruption; hence, the respondents are entitled for



regularization.

13. It is further contended that the contractors were changing and it was the respondent who were working continuously with the petitioner.

14. In view of the aforesaid submissions, the learned counsel for the respondents submitted that the instant petition is without any merit and may be dismissed.

15. The matter was heard at length with arguments advanced by the learned counsel for the parties. This Court has also perused the entire material on record and duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel for the parties.

16. It is the case of the petitioner that the impugned award suffers from illegalities as the respondent workmen were regularized by the learned Tribunal despite the settled position of law that regularization is not a vested right of a contractual employee. Furthermore, it is submitted that the petitioner had no direct control over the respondents, instead it was the contract manager who was directly working with the respondent workmen.

17. In rival submissions, the respondents submitted that impugned award has been passed after duly analysing the pleadings on record and considering the fact that the respondents were continuously working as lift operators without any break since 1995-96 therefore they were entitled to be regularized.

18. Therefore, the question which falls for adjudication before this Court is whether the impugned award suffers from any illegality and merits



interference of this Court under its writ jurisdiction or not.

19. At this juncture, this Court deems it imperative to peruse the impugned award. The relevant extract of the impugned award is reproduced herein below:

“The Tribunal has to examine relationship between the management and the workmen. It is to be examined whether there exists master and servant relation or not. It has been held in 1999 Lab I C 825 that the Tribunal can give findings that contract between the Company and its contractors is sham and bogus. The finding will not obviously abolish the contract labour system so the matter referred to here is regarding the factual finding whether contract is sham and bogus. There is no reference regarding abolition of contract labour.

In the present case also almost 2 workmen have been working since 1995/1996. The contractors have changed every year as per the admission of the management witness. 2 workmen have been performing work since 1995/96. The workmen worked in the establishment of the management. The management has control and supervision over the contractor's men, the workmen remaining the same. The contract is changed every year so certainly this is a facade of the papers and contract is camouflage and sham and bogus. The entire establishment is owned and maintained by the management where the contractor's men are employed. The contract is not genuine one.

It was submitted from the side of the workmen that the CLRA 37 of 1970 is an act to further social welfare and general interest of the community. The contract labour is to be abolished whenever the contract is found sham and not genuine. In the instant case the contractor is only name giver. The workmen are under the control and supervision of the management.

It has been held by the Hon'ble Supreme Court in AIR 1986 SC I - workman ARI Ltd. Versus ARI Ltd. Bhaw Nagar that the



Tribunal has jurisdiction to examine the reality behind the façade of paper arrangement of contract labour system so according to the judgment of the Apex Court the Tribunal can examine the genuineness or otherwise of the contract labour. I find no force in the argument of the management.

It was further submitted that the management is an instrumentality of the Central Government. They are charged with the duties of discharging their functions in a fair and just manner. They are expected to act justly and fairly and not arbitrarily or capriciously. The management has not been acting fairly impartially and reasonably. It is their duty to act fairly. Contractors have been changed but the workmen remain the same. It is almost the admitted case of the management.

The Hon'ble Supreme Court in AIR 2001 SC 3527 has held that the industrial adjudicator will have to consider the question whether the contract has been interposed either on the ground of having undertaken to produce any given result for the establishment or supply of contract labour for work of the establishment under the genuine contract or whether it is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefits there under. If the contract is not genuine the alleged contract labour should be treated as the employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. In the instant case it is proven fact that the Contractors are mere name givers and job lenders. The workman work under the control and supervision of the management.

It has been held in AIR 1953 SC 404 that if a master employs a servant and authorize him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for cash consideration, the employees thus appointed by the servant will be equally with the employer servant of the masters. In the instant case there is no servant to employ a number of persons. The name of the contractor is fake one. The



workmen have been retained in the service of the management since 1995/96. 2 workmen have been working continuously since 1995/96 and they have become an asset to the management.

It has been held in 1997 AIR SCW Page 430, that the industrial adjudicator should decide whether there is valid contract or it is a mere ruse/camouflage and if it is found that the contractor is only a name lender the management should be directed to regularize the workmen. In JT 2003 (1) SC 465 the Hon'ble Supreme Court has held that industrial adjudication is appropriate remedy for the alleged contract workers. In (2000) | SCC 126 the Hon'ble Supreme Court has held that there are multiple pragmatic approach/factors which should be considered in deciding employer and employee relationship. According to the criteria, there should be control and integration. The management has doubtless control over the alleged contractor's men as they work in the establishment of the management. They are integrated to the service of the management. There are no terms and conditions of the contract so there is master and servant relationship. The creation of contract labour is only sham and camouflage and the employer cannot be relieved of his liabilities.

In J.T 1999 (2) SC 435 - the Hon'ble Supreme Court has held that if the work is of perennial nature or of sufficient duration, contract workers shall be considered to be the direct employees of the management and they are entitled to be absorbed permanently as employees of the management. The work in the instant case, no doubt, is of perennial nature as the workmen have been continuously working since 1993. It is for sufficient duration. So the alleged contractor's men will become the servant of the management. The management has some vested interest. i.e. why the management is continuing the workmen, since 1993 and in order to veil this reality the management, is, giving the name of several contractors every year. The management is doing violent injustice to the workmen. They



have been deprived of the facilities and emoluments of regular employees since 1993. The intermediary has been introduced in order to deprive the workmen of their rights. The work is not of seasonal nature. Such workmen should not be deprived of their legitimate right.

It was submitted from the side of the management that the workmen are the contractor's men and this Tribunal has no jurisdiction to regularize the workmen. Only the Central Government can abolish the contract labour and direct for regularization of the contractor's men. There is no merit in the argument of the management. The Hon'ble Supreme Court in a Catena of cases has decided that it is the duty of industrial adjudicator to examine and give findings whether contract labour is sham and a mere camouflage to evade the responsibility of the management.

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It has been held in this case that whether there is prohibition of contract labour or otherwise the industrial adjudicator will have to consider the question and in case the contract appears ruse and camouflage to evade compliance with various beneficial legislations the so called contract labour will have to be treated as the employee of the principal employer and he shall be directed to regularize the services of the contract workers.

Engagement of contract workers for perennial and regular nature of job is prohibited. The security function is a perennial nature of job. So long as the respondents exists there would be need of security for them, so the work is of existing, continuous and perennial in nature for such work contract workers cannot be employed.

According to well reorganization definition of contract it is an agreement for a given result. The result should be visible. Contract labourers can be engaged for the work of contractor only and not for the work of any establishment. In the present case the work is of the establishment and not of the contractor.



The term supply of labour by a contractor is against human dignity. No one can be a supplier of human labour to any establishment. It is the duty of State to give employment to citizen and not of the contractors. Contractors cannot supply labour to any establishment.

In view of the above discussion it becomes quite obvious that the contractors workmen in the instant case have been retained all along and contractors have been changed. So the contractor is only a label of a bottle. This label is changed from time to time but the contents of the bottle always remain the same. The contractors have been changed and the workmen have been retained. Such a system is in-human. The contractors are the direct employees of the respondent/management.

From the foregoing it becomes quite obvious that these two workmen have been working regularly and even without artificial breaks since 1995-96. The contract is camouflage. There is direct relation of master and servant between the respondent and the workmen.

In Uma Devi's case the Hon'ble Apex Court has directed that if the workmen have been working for 10 years regularly and without orders of Court the Government should consider feasibility of their regularization, but the government has not considered so. These workmen have worked for more than 11 years. Their services have not been regularized, so the workmen deserve regularization within two months from the date of publication of the award.

The reference is replied thus: -

The demand of the CPWD Karamchari Union (Regd.) in relation to regularization/absorption of the services of S/Shri Anand Kumar Gautam and Mani Lal Sah, Contract Labourers through M/s. Kiran Elevator Service in CPWD, New Delhi who undertakes the job of operating the lifts in the establishment of Lady Harding Medical College and allied Hospitals, New Delhi- is legal and justified. The abovenamed workmen deserve regularization. The respondent no.1 should regularize the



workmen on the post of Lift Operators from the date of the award.

Award is given accordingly.”

20. Upon perusal, it is made out that the Tribunal ruled in favour of the workmen observing to the effect that the respondent workmen had consistently been working with the petitioner, while the contractors themselves have changed over time. Consequently, the Tribunal held that the contractor designation merely served as a nominal identifier, subject to periodic alteration, while the essence of the arrangement remained unchanged. The workmen, thus, were conclusively deemed as direct employees of the Petitioner.

21. The contractual arrangement, therefore, served as a facade, obscuring the direct relationship of master and servant between the petitioner and the workmen. The Tribunal also discussed the landmark judgment of *Uma Devi (Supra)*, wherein the Apex Court had explicitly instructed that if workmen had rendered continuous service for a period of 10 years without interruption, the Government ought to have explored the feasibility of their regularization.

22. The respondent workmen had served for over 11 years, the Tribunal held them to be entitled to regularization within 2 months of the publication of the impugned award. Accordingly, the impugned Award was passed in the favour of the respondent workmen.

23. Since it is an admitted fact that the respondent workmen were working with the petitioner for more than 11 years, this Court is of the view



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that the learned Labour Court has rightly held that the respondents are entitled to be regularized as the work done by the respondents is of perennial and permanent nature.

24. The learned Labour Court has further correctly opined that though the respondents were engaged via contract managers, however, the respondents have been consistently working with the petitioner without any interruption despite there being a change in the contract manager. Hence, the contractor is only a label of a bottle which changed from time to time but the contents of the bottle always remain the same i.e. the respondent workmen

25. Accordingly, the impugned award rightly holds that the respondent workmen are entitled to be regularized.

26. In view of the aforesaid submissions, the impugned award dated 21st February 2007 in ID No.74/2001 passed by the learned Central Government Industrial Tribunal-cum-Labour Court merits no interference and is thus upheld.

27. Accordingly, the instant petition dismissed.

28. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 19, 2024

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Click here to check corrigendum, if any