Central Administrative Tribunal
Principal Bench

(15)

O.A. No.1059/2002

New Delhi this the 20th day of December, 2002

Hon'ble Shri Shanker Raju, Member (J)

1. Hindustan Engg. & General mazdoor union,
   Through its General Secretary,
   Narain Singh, D-2/17, Sultanpuri,
   New Delhi. &
   (50 others as per memo of parties)

-Applicants

(By Advocate: Shri Mahesh Srivastava)

Versus

1. Union of India,
   Through Secretary,
   Ministry of Defence,
   South Block, New Delhi.

2. Commanding Officer,
   126/LET/AD, Anand Parvat,
   New Delhi.

3. Commanding Officer, Regiment No.21,
   Signal Company Commander,
   Group Head Quarter (Military Camp),
   Anand Parvat, New Delhi.

-Respondents

(By Advocate: Shri A.K. Bhardwaj)

O R D E R

MA-845/2002 for joining together is allowed.

2. Applicants, 51 in number, have been working for the last 15-20 years sweeper/safaiwala. Being apprehended with dispensation of their services approached this Tribunal, seeking direction to the respondents not to terminate their services and further to regularise them.

3. Learned counsel for applicants Shri Mahesh Srivastava stated that applicants have been working for the last 15-20 years with the respondents without any complaint as to their performance and have been residing by raising small structure at T-45, Anand

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Parbat. According to the learned counsel applicants are engaged in the affairs of the union and are being paid from the consolidated fund of India. Their names have been put on muster roll but yet they have not been regularised whereas their services are to be replaced by ad hoc contractual employees which cannot be countenanced as per law laid down by the Apex Court in State of Haryana v. Piara Singh, 1992 (4) SCC 118.

4. It is further stated that the jurisdiction of this court is not barred as under Section 7 of the Industrial Disputes Act, 1947 though applicants who are not employed in any industrial establishment and in the light of the decision of the Apex Court in Secretary v. Suresh Kumar, JT 1999 (2) SC 435 any contractual appointment of applicants is mere a sham and camouflage and in fact they have been directly working under the respondents having master and servant relationship, as such non-regularisation after serving for such a long period deprives their fundamental rights enshrined under Articles 14, 16 and 21 of the Constitution of India.

5. Learned counsel for applicants annexed copies of the ration cards, voter identity cards as well as few certificates issued by the respondent officers, certifying that applicants had been working and alongwith rejoinder they have annexed certificates issued from schools and various authorities, certifying their working. It is also stated that applicants have been issued entry passes, which

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clearly shows that they are working with the respondents and are being paid from out of the contingency fund of India.

6. Respondents' counsel Shri A.K. Bhardwaj vehemently denied the contentions of the applicants and by referring to the decision of the Apex Court in Steel Authority of India Ltd. and Others etc. etc. v. National Union Water Front Workers etc. etc. JT 2001 (7) SC 268 contends that job of sweeping and cleaning has been entrusted to contractor and the applicants are not employed by them. They are not government employees. In so far as they encroaching on defence line for which action has been taken to evacuate them in the restricted area. The security passes are issued from the point of view to gain entry in the restricted area. Learned counsel for Respondents further states that in absence of any evidence produced and annexed with the OA showing appointment of the applicants by the respondents, claim cannot be countenanced, as one who alleges he has to prove the same and having failed to show any proof regarding the appointment by the respondents and in absence of any evidence that they have been paid from the consolidated fund being not the employees of respondents having no master and servant relationship they are not amenable to the jurisdiction of this court as neither holder of any civil post nor serving union of India. Moreover, by referring to the relevant observations made by the Apex Court in SAIL' case (supra) it is contended that it is for the industrial adjudicator to determine the question and to inquire into the disputed question

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whether the contract is a sham or camouflage or whether the applicants are employees of the respondents. He further relies upon the decision of the coordinate Bench in Anand Kumar Sharma v. Union of India, OA No.1516/2001 decided on 3.1.2002 wherein similar circumstances the OA has been dismissed for lack of jurisdiction.

7. I have carefully considered the rival contentions of the parties and perused the material on record. Admittedly, applicants have not furnished any evidence in the form of letters of their appointments but in fact they have been appointed by the respondents or they are holding civil posts. Once, it is denied by the respondents as to their appointment by them, the burden shifts upon applicants to prove to the contrary. However, the ration cards and election cards would be an irrelevant consideration for determining whether they have been employed by the respondents or not. The certificates issued also do not indicate that they have been employed on a civil post by the respondents or getting their salary out of the consolidated/contingency fund of India. Moreover, the following observations have been made by the Apex Court in SAIL's case (supra):

> "If the contract is found to be genuine and prohibition notification under section 10 (1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate government, prohibiting employment of contract labourer in any process, operation or other work of any establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labourer, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of

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employment by the contractor and also relaxing the condition as to academic qualifications under other technical qualifications.

122. We have used the expression "industrial adjudicator" by design as determination of the question aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal court whose determination will be amenable to judicial review."

8. Moreover, the coordinate Bench, to which I respectfully agree, made the following observations in OA No.1516/2001 (supra) on the basis of the decision in SAIL's case (supra):

"7. On a submission made by the learned counsel appearing on behalf of the respondents, I consider it necessary to proceed further and clarify in terms of para 122 of the judgement rendered by the Supreme Court in Steel Authority of India's case (supra) (reproduced below), that whether or not a contract is a mere ruse or a camouflage necessarily entails a detailed investigation into disputed questions of fact and it will be impossible for High Courts to take up such investigations.

122. We have used the expression "industrial adjudicator" by design as determination of the question aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal court whose determination will be amenable to judicial review.

Accordingly, in all such cases, the appropriate authority to go into such issues will be an Industrial Tribunal and/or an Industrial Court subject to the condition that a determination made by such a Tribunal or a Court will still be amenable to judicial review. In this view of the matter, I find it appropriate to hold that this Tribunal which substitutes High Courts in service matter, would also lack competence to investigate matters relating to engagement of contractual labourer and accordingly, whenever issues concerning engagement of contractual labourer

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in terms of the provisions made in the CLRA Act, 1970 arise , the matter should be left to be gone into by an Industrial Tribunal or an Industrial Court and to that extent, the jurisdiction of this Tribunal in such matters and to the extent indicated will cease to operate."

9. In the light of the law laid down, in my considered view, applicants have miserably failed to establish that they have been engaged by the respondents or were being paid from the contingency fund. They have also not established regarding master and servant relationship with the respondents.

10. In so far whether they have been working through a contractor, which is on contract, which is a sham or camouflage, the same is to be gone into by an industrial adjudicator and to this extent jurisdiction of this court is barred. Accordingly, OA is dismissed for want of jurisdiction, with liberty to applicants to approach the appropriate forum in the light of the decision in SAIL's case (supra).

11. Interim orders issued on 26.4.2002 are hereby vacated. No costs.

S. Raju

(Shanker Raju)
Member (J)

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