

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

G.P. NO. 308/2003
IN
O.A. NO. 1745/2002

New Delhi, this the 5th day of February, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

1. Devinder Kumar,
S/o Shri Hem Raj,
R/o 56-4401, Rehgar Pura,
Karol Bagh, New Delhi
2. Brijesh Kumar,
S/o Shri Munna Lai,
R/o RZ-83, Naia Par Basti,
East Sagar Pur, New Delhi
3. Om Prakash,
S/o Shri Anirudh Raj,
R/o RZ-20, Palam Road,
East Sagar Pur, New Delhi
4. Raj Kumar,
S/ Shri Ram Pal,
R/o B-85, Krishan Kunj Gali,
North Ghonda, Delhi-53

..... Applicants
(By Advocate : Shri S.C. Saxena)

Versus

Shri S.D. Mahapatra,
Secretary, Ministry of Textiles,
Udyog Bhawan,
New Delhi

..... Respondent
(By Advocate : Shri N.S. Mehta and
Shri B.S. Maine for Ms. Meenu Maine)

O R D E R (ORAL)

BY SHRI SARWESHWAR JHA, MEMBER (A):

Heard the learned counsel for the parties.

2. The applicants in the CP have alleged that the respondents have still not implemented the orders of the Tribunal given in OA No 1745/2002 on 11.3.2003 and have instead engaged fresh casual workers/contract labourers for doing the work which was being done by the applicants.



Shri Sarweshwar Jha

Earlier also the applicants had filed Original Application No. 1357/2000 (Devinder Kumar, Brijesh and Om Prakash) and OA No. 1358/2000 (Raj Kumar) for their re-engagement as casual workers and the same had been disposed of by the Tribunal vide orders dated 2.5.2001 and 4.5.2001 respectively with directions to the respondents to re-engage the applicants when work would be available with them in preference to juniors and freshers.

3. The respondents have, however, submitted that the applicants in the CP had earlier approached this Tribunal vide the following - (i) OA No.1357/2000 (Appx-D) (ii) OA No.1362/2001 (Appx-G) with Rejoinder (Appx-I) (iii) CP No.648/2001 (Appx-L) with Rejoinder (Appx-M) in OA No.1357/2000 (iv) OA No. 1358/2000 (Appx-F) (v) OA N.2666/2001 (Appx-S) (vi) CP No.649/2001 (Appex-U) in OA No.1358/2000 and (vii) OA N.1745/2002 (Appx-A) for the same cause as made out in their present CP No.308/2003, viz., that injustice was done to them by the respondent by not reengaging them as Casual Labours despite Tribunal's Orders of 2.5.2001 and 4.5.2001 in OA Nos. 1357/2000 and 1358/2000 respectively and that the same had been dismissed by the Tribunal vide their orders mentioned hereinbefore on the basis of the respective related counter affidavits submitted by the respondents. They have recounted the orders of the Tribunal given in the said OAs/CPs and have contended that the case of the applicants is barred by the doctrine of res judicata. They have further alleged that the applicants in the CP with its additional affidavit have made an endeavour to cause deliberate and continuous embarrassment to the respondents without any reason by

Devinder Kumar

making persistent attempts to force the respondents to re-engage them as casual labourers in terms of the Tribunal's orders dated 2.5.2001 and 4.5.2001 in OA No. 1357/2000 and OA No. 1358/2000 respectively. They have reiterated their submissions made earlier that the applicants were casual labourers in the respondent's office only for a short duration during 1999-2000 for doing seasonal and casual nature of work and not for doing any regular nature of conservancy work as claimed by them through the CP. They have, therefore, no right to claim reengagement as casual labourers in the respondent's office.

4. The respondents have categorically affirmed that they have not deployed casual labourers on daily wage basis after the OAs referred to hereinabove were decided by the Tribunal. The three individuals, who have been named in the additional affidavit filed by the applicants as having been employed after the decisions of the Tribunal became available and operative, are the contractor's workers and not employed by the respondents. According to them, the contractors have full liberty to carry out the responsibility of conservancy work in the respondent's office through his own personnel in any manner on the conditions stipulated in the letter of contract and the applicants have no right to interfere with that aspect of the matter.

5. The policy regarding not continuing with the system of deployment of casual labourers, which has already been agitated and decided vide the Tribunal's order dated

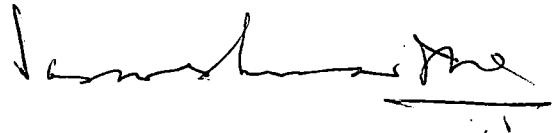
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11.3.2003, has also been referred to by the respondents in the reply. They have since entrusted the regular conservancy work in their Office in public interest to the Contractors particularly for the reason that such work being regular in nature is not to be assigned to casual labourers. They have, therefore, pleaded that the CP deserves to be dismissed ab initio.

6. The learned counsel for the applicants, referring to the decision of the Chandigarh Bench of the Tribunal in OA No.800/CH/2001 dated 14.8.2002 (2003 (2) (CAT)241), has submitted that contract labour system has been prohibited in sweeping and cleaning works and that an unlicensed contractor has been assigned the work earlier being done by the casual labourers (applicants) to thwart treating them direct labourers. A reference has also been made to the observations of the Hon'ble Apex Court in "Secretary, HSEB v. Suresh and Ors." (AISLJ VII 2003 (2) 244) in which, among other things, the following has been held:-

".....Contractor not a licensed contractor under the Act - The so-called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Haryana State Electricity Board on the one hand and the employees on the other hand could be clearly visualised. Workers having worked for 240 days in a year are entitled to be absorbed permanently."

7. It has also been emphasised by the learned counsel for the applicants that in terms of the observations of the Tribunal (Chandigarh Bench) in OA No.800/CH/2001 that "the contract labour shall be treated as direct employees of the Principal employer". A reference in this regard has also



been made to the fact that the work of sweeping, cleaning and watch and ward has been prohibited under a Notification issued by the Ministry of Labour under provisions of Section 10 of Contract Labour (Regulation & Abolition) Act, 1970 and it has accordingly been contended that in view of such a prohibition it is not open to the respondents to resort to a method prohibited under the appropriate law to deny the claim of the applicants.

8. It is, thus, observed that while the directions of the Tribunal have been absolutely clear and categorical on the question of reengaging the applicants if and when the work is available in preference to freshers and juniors and whereas it is undisputed that the work, which has been entrusted to contractors is available, we cannot appreciate the submission of the respondents that the said work has been entrusted to a Contractor inspite of the prohibition in regard to engagement of contract labour for the said kind of work. It is also not clear to us as to whether the respondents have been conscious of the fact that the applicants, by virtue of their having rendered the minimum days of service required for meriting consideration of such employees for regularisation of their services, deserved to have been considered accordingly and whether they have explored the possibility of regularising the services of the applicants against appropriate posts in terms of the directions of this Tribunal. To contend that the applicants had approached the Tribunal earlier also and the matters raised by them have already been dealt with and, therefore, the doctrine of res judicata would apply to their present CP is, therefore, not really relevant or



tenable so far as the fact remains that the respondents have engaged the services of a Contractor for an area of work which is prohibited under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970.

9. Having considered the submissions of both the parties on the subject, we are, therefore, convinced that the action of the respondents in entrusting the conservancy work of the respondents' Office to a Contractor, thereby thwarting re-engagement of the applicants in terms of the direction of the Tribunal in OA 1357 and OA 1358 of 2000 and also OA 1745/2002 is not in order. Obviously, the respondents have not proceeded with the re-engagement of the services of the applicants under the guise of the said work having been assigned to a Contractor, which was not the intention underlying the orders of this Tribunal as referred to hereinabove. The respondents are accordingly directed to comply with the directions of this Tribunal as given in OA Nos. 1357/2000, 1358/2000 and 1745/2002 within a period of three months from the date of receipt of a copy of this order without further taking the position that the work is not available, as the same has been assigned to a Contractor and the same is not permissible under Contract Labour (Regulation & Abolition) Act, 1970.

10. With this the CP stands disposed of in terms of the above directions. Notices discharged.


(SARWESHWAR JHA)
MEMBER (A)


(SHANKER RAJU)
MEMBER (J)