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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2148/99

New Delhi, this the 20th day of December, 2000

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. Chiranji Lal, R/O C-344, J.J.Colony, Inderpuri, New Delhi-12.
2. Arjun, R/O C-60, J.J.Colony, Inderpuri, New Delhi-12.
3. Kanayah Lal, H.No.72, Sarojini Nagar, New Delhi-23.
4. Ajay Kumar, H.No.298, Type II, Inderpuri, New Delhi-12.
5. Sunil Kumar, C-114, Lalpuri, J.J.Colony, New Delhi.
6. Umesh Kumar, H.No.835, Krishi Kunj, New Delhi-12.
7. Manna Ram, H.No.346, Manglapuri, New Delhi-12.
8. Ram Chander, H.No.1640, Krishi Kunj, New Delhi-12.
9. Vijay, C-107, J.J.Colony, Inderpuri, New Delhi-12.
10. Manoj Kumar, H.No.1640, Krishi Kunj, New Delhi-12.

....Applicants.

(By Advocate: Sh. S.L.Hans)

VERSUS

1. Union of India through Secretary, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi.
2. Director (Administration) I.A.R.I., Pusa, New Delhi-12.
3. Sh. Manoj Kumar (Contractor), C/O Director (Administration), I.A.R.I., Pusa New Delhi-12.

...Respondents

(By Advocate: Ms. Geetanjali Goel)

O R D E R

1. This OA has been filed by 10 applicants against apprehended, arbitrary and illegal termination of their services by the respondent No.3 on the allegation that the respondent No.3 was acting under the directions of

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respondent Nos.1 & 2 and further that their intention was to replace the applicants by outsiders and fresh contract labour. As against this, the relief sought is grant of temporary status in terms of the DOPT's Scheme of September, 1993 and payment of wages in line with the Govt.'s circular dated 7.6.88. The further relief sought is regularisation of the applicants' services after the grant of temporary status.

2. The applicants are admittedly working as contract labour under respondent No.3 who is a contractor and who is performing the tasks assigned by the Principal Employers, namely, the respondent Nos. 1 & 2. The applicants are stated to be working in connection with the maintenance of IARI Housing Colony at Pusa. The tasks performed by the applicants are supervised by the officials working for the respondent Nos. 1 & 2. The applicants are working as Plumber, Helper, Mason, Carpenter and Sewerman. They are stated to have been working in some cases from 1997, in others from 1998 and in still others from 1999. The wages paid to them range from Rs.1300/- to Rs.2100/-. The applicants are working in connection with the Civil Maintenance of the aforesaid residential colony.

3. I have heard the learned counsel on either side and have perused the material placed on record.

4. The respondents have filed their reply and wish to contest the case. They have sought to demolish the case of the applicants by stating that they are not employed with the respondents and are instead working for

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a contractor who in turn has been engaged by the respondents on labour rate service contract for quarters and external sewerage system in Krishi Kunj residential complex. The respondents have filed an office order dated 13.11.97 to show that one Sh. Manoj Kumar has been engaged as a contractor on payment of Rs.2.3 lacs for a period of five months from 1.11.97 to 31.3.98. A number of terms and conditions have been set out for compliance by the contractor (page 24 of the paper book.)

5. The learned counsel for the applicants has contended that the aforesaid contractor is fake and is just a name lender and that the respondent Nos. 1 & 2 are the real employers of the applicants. His contention is that a number of attempts were made to serve notice on the aforesaid contractor but the same have been returned unserved with endorsements showing that no such person existed. The learned counsel for the respondents was quick to point out that practically all such attempts made by the applicants have been so made through the respondents and not directly. The learned counsel has asserted that the respondents are not at all responsible for serving the notice sent by the applicants on the aforesaid contractor. The learned counsel for the applicant has also placed on record (page 36 of the paper book) a photo copy of a certain note scribbled by a certain Engineer on 19.5.99. The note is reproduced below:-

"This is for the information that Plumber Chiranjive and Manohar are authorised on behalf of IARI staff to rectify and repair the water supply line from Naraina

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Pump house to Krishi Kunj residential complex."

The aforesaid Chiranjive, according to the learned counsel for the applicants, ^{is} shown ^{as} applicant No.1 in the memo of parties. On this basis, the learned counsel contends that the applicants are working actually under the command and control of the respondent Nos. 1 & 2 and not under the aforesaid contractor. The learned counsel has urged that keeping these factors in view the veil must be pierced to discover the truth which according to him is that the applicants are working directly under the respondent Nos. 1 & 2 and the said contractor is a mere name-lender. He has placed reliance on the judgement of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh & Anr. reported as JT 1999 (2) SC 435. I have considered the aforesaid contention raised by the learned counsel for the applicants and the facts stated by the learned counsel for the respondents. The applicants have not been paid by the respondents and no letter of appointment has been issued by them. The applicants have themselves admitted that they are working as contract labour under the aforesaid contractor. They have mentioned the amounts paid to them in respect of the work done by them but have not stated anywhere that the payments have been made by any officer working for the respondent Nos. 1 & 2. Clearly the applicants are being paid by the contractor who in turn has been engaged as such by the respondents. There is nothing wrong if the officials working for the respondents Nos. 1 & 2 also supervised the work of the applicants who are

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deputed/supplied by the contractor. There is no convincing evidence available, therefore, to establish that the aforesaid contractor is a mere name-lender.

The learned counsel for the applicants raised an issue about a true copy of the office order dated 13.11.97 referred to above having not been supplied to him along with a copy of terms and conditions. However, he did not pursue the matter nor he did prefer a formal application to say whatever he wanted to say in this connection.

6. Insofar as the jurisdiction of this Tribunal in cases such as these is concerned, the learned counsel for the respondents has relied on a judgment given by the Chandigarh Bench of this Tribunal on 13.8.99 (OA No.365/CH/99 with other connected cases). In this judgement, the Tribunal has dealt with a similar issue arising in a number of applications filed before it. The applicants in those cases were working as Helpers, Guards, Attendant-cum-Peons, Sweepers, Electricians, Refrigerator Mechanics, Air Conditioner Operators, etc. One of the main parties in those cases was the Engineering Department of the Chandigarh Administration which had engaged various contractors for different jobs to be performed in connection with the functioning of the Govt. Medical College, for varying periods of time. It was alleged that Chandigarh Administration had indirectly conferred the power to appoint manpower on contractors for doing works of a perennial nature. It was also alleged that the contractor was only a via-media. The applicants in that case also had relied

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on the Supreme Court's judgement in Secretary, HSEB V. Suresh's case (supra). The Chandigarh Administration, being respondents, had pleaded that the applicants were not members of Civil Services nor had they been appointed by the Engineering Department of Chandigarh Administration in accordance with any Recruitment Rules. The applicants were also not governed by any terms and conditions of service applicable to UT employees, and further that the applicants in that case were not marking their attendance with the Administration and there is no record with the Administration to show the continuity of their service. The Chandigarh Administration had also not issued any appointment letter to the applicants and consequently the master-servant relationship also did not exist between the applicants and the UT Administration. The respondents in that case had admitted that the work in the Engineering Deptt. as well as in the Medical College Hospital was of a permanent and continuous nature. However, the Administration was at liberty to make arrangements by way of assigning contracts, taking persons on deputation or by making recruitment etc. In the aforesaid judgement, a reference has been made to Biswa Nath Saha & Others Vs. Union of India & Ors. in Civil Appeal No.1350/86 decided by the Supreme Court on 3.4.97 which was noticed in Union of India & Ors. Vs. Sudhir Mukerjee & Others, JT 1998 (3) SC 540. In that case, the learned Court had held that the Tribunal had no jurisdiction to entertain the application filed on behalf of Railway-contractor's labourers. In that same judgement, another case of Dinan Nath & Ors. Vs. NFL & Ors. reported as AIR 1992 SC 457 has also been referred

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to. In that case, labour was employed by the principal employer through a contractor on contract basis and it was held that such labour cannot be considered to be direct employees of the principal employer, particularly so when under Section 10 such employment of contract labour has not been prohibited. The various relevant provisions of the Contract Labour Act, 1970 were also briefly discussed in the aforesaid judgement of the Tribunal. It has been stated that the aforesaid Act does not abolish contract labour system altogether and instead provides for the protection of certain rights of the labour employed by the contractors. The Act also provides for licensing of contractors and powers of cancellation of licenses. The appropriate Govt. may after following the prescribed procedure prohibit by a notification, employment of contract labour in any process, operation or other work in any establishment. It was noted in the aforesaid judgment of this Tribunal that it was nobody's case that the official respondents/appropriate Govt. had ever issued a notification prohibiting employment of labour through contractors for jobs on which these applicants were working. As to whether a work is of a perennial nature, the decision of the appropriate Govt. shall be final, has also been pointed out. ^{with} powers thus available to the appropriate Govt. to prohibit employment of contractual labour through a licensed contractor on jobs of a perennial nature, the Court cannot, in the circumstances, hold that by the aforesaid Act of 1970 the employment of the applicants through licensed contractors or other contractors has been prohibited.

7. In the background of a detailed discussion, a part of which has been summarised in the above paragraph, the Chandigarh Bench of this Tribunal had held that it had no jurisdiction to entertain and adjudicate upon such petitions. Consequently, all the petitions before them were dismissed.

8. In the present OA also, I find that the learned counsel for the applicants has not successfully advanced any plea that the respondents are not an establishment or, as Principal employers, are not registered and, therefore, cannot employ contract labour or the contractor is not a licensed contractor under the 1970 Act. He has also not shown any notification prohibiting employment of contract labour for performing the relevant work under Section 10 of the 1970 Act, nor has been placed before me any Govt. decision taken under the same Section 10 declaring the relevant work as of perennial nature. On the other hand, as stated in the beginning of this order, the respondents have asserted that the applicants are working as contract labour through a proper contractor.

9. From the arguments advanced by the learned counsel on either side, I gather that the facts and the circumstances of the present OA are largely similar to the facts and circumstances obtaining in the OAs decided by the Chandigarh Bench of this Tribunal on 13.8.99. Accordingly, the present OA deserves to be dismissed inter alia for the same reason, also taking into account what I have just said in para 8 above.

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10. As regards the relief sought by the applicants, the question of conferment of temporary status does not arise for the reasons stated above. Nevertheless, it must be noted that the applicants have not placed on record the details of the number of days for which they may have remained employed. In the absence of precise information about the number of days, the applicants may have served in a particular year, it is not possible to consider the request for conferment of temporary status in terms of the DOPT's Scheme in question. It is a different matter though that for want of jurisdiction and for all the reasons mentioned in the previous paragraphs, it is not at all necessary to consider this plea which deserves to be rejected straightaway.

11. In the result, the OA fails and is dismissed without any order as to costs.

S. A. T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

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