

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1689/98

HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this the 28th day of July, 1999

(18)

1. Narendra Kumar
S/o Shiv Narain
R/o RZ-34, Gupta Colony
Near Sabzi Mandi, Delhi
Working as Driver under
Executive Engineer, SPG Project
CPWD, Sector-8
Papan Kalan, New Delhi
2. Shri Bhagmal Singh
S/o Shri Jaipal Singh
R/o G-Block, Swarup Nagar
Shiv Mandir Road
GT Karnal Road, Delhi
Working as Driver under
Executive Engineer, SPG Project
CPWD, Sector-8
Papan Kalan, New Delhi

....Applicants

(By Advocate: Shri Satya Mitra Garg)

Versus

1. Union of India
The Director General (Works)
CPWD, Nirman Bhawan
New Delhi
2. Executive Engineer (Circle)
SPG Project, CPWD
Sector 8, Papan Kalan, New Delhi

....Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R

The applicants claim that they have been engaged as daily rated employees in the capacity of vehicle drivers with the respondent CPWD but nominally they are shown to be employed through contractors. They submit that though they were initially appointed on work order basis but fresh orders have been issued continuously and they have been working uninterruptedly since December, 1997. They also claim that the duties they are discharging are of perennial nature and the

(9)

applicants are in permanent need of their services. Relying on various judgments of the Hon'ble Supreme Court in Gujarat State Electricity Board Vs. Hind Mazdoor Sabha, they have stated that they are entitled for appointment on regular basis with salary at par with their counterparts engaged on regular basis.

2. The respondents have denied the claim. They state that the CPWD undertakes various projects from time to time. In the present case, a project has been taken up for construction of building of Special Protection Group. Under the arrangement of the contract, machinery and material are supplied by the department while the operators and drivers are arranged by the contractor. They say that the appointments are made directly by contractor. The applicant so appointed, according to the respondents, also have been engaged by the contractor and receive their payments from the contractor and not from the respondents. They submit that there are no regular vacancies available with them. Any how after completion of the project on the completion of the buildings, the contract will also be completed.

3. I have heard the counsel on both sides. It is an admitted position that the applicants have been engaged by the contractor only. There is also no claim that they receive payment directly from the respondents. There is also no finding of the competent labour court that the contract is a mere camouflage and that there is a direct master-servant relationship between the respondents and the applicants. It is also an admitted

20

position that the applicants have been selected and employed by the contractor and not by the CPWD and that the project is liable to be completed soon. On the face of it, therefore, the applicants seem to have no case whatsoever.

4. The learned counsel for the applicant contended that in a similar case this very Bench of the Tribunal in O.A. No.256/98 decided on 28th July, 1998 Bijay Narain Misra and others Vs. Union of India, D.G.(Works), CPWD, held that the applicants therein though designated as contractors, were actually casual workers on daily rated basis working with the respondents and on that basis the respondents therein were directed to reconsider the applicants to reengage them subject to availability of work, grant of temporary status and regularisation in the post. It is also contended by the learned counsel that even if the present work is closed the vehicles alongwith machinery will shift to a fresh project and, therefore, the requirement of a driver will continue unabated.

5. None of the above two arguments pass muster. In Bijay Narain Misra Vs. Union of India and others, supra the facts were different inasmuch as the applicants were being treated as employed through contractors though they were themselves the contractors also; in other words the applicants were not working through a contractor but had themselves been designated as contractors in order to evade any responsibility to consider them for grant of temporary status etc. The facts of the case here are different inasmuch as

21

21

admittedly the applicants have neither been directly recruited by the respondents nor have been designated as the contractors themselves, nor are being paid directly by the respondents. It is also claimed by the respondents that there are no sanctioned posts available against which the applicants could be considered. The posts of driver belong to Group 'C' category and, therefore, the scheme for grant of temporary status and regularisation, which is confined to Group 'D' category, is not applicable in the present case.

6. There is another aspect of the case to which my attention has been drawn by the learned counsel for the respondents, i.e. in case relief sought for by the applicants is to be granted, it would tantamount to entry into public service through the backdoor inasmuch as the applicants have been recruited through the contractor without any open advertisement. To grant relief in the present case would give rise to a situation where some people can bypass the recruitment rules by the simple device of first obtaining their jobs through the contractors. Where the requirement is of a perennial nature and the so-called contract labour has been working for very long period of say 10-15 years continuously, as in the case of staff employed by the power station ^MGujerat Electricity case, one can say that the contract system is a mere camouflage. Here the applicants have been employed by a contractor, and have been engaged for only a year or two, are receiving their pay from the contractor and seek regularisation for a post in government, for which statutory

02

recruitment rules exist.

22

7. In the light of the above discussion, the O.A. is dismissed. There will be no order as to costs.

R.K. AHOJA
(R.K. AHOJA)
MEMBER (A)

sc*