

(3)
CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A. No. 2116/98

New Delhi, this the 16th day of December, 1998

HON'BLE MR. N. SAHU, MEMBER(A)

Shri Abhishek Sharma,
Working as Computer Operator
in the Office of the Engineer-in-Chief,
PWD(NCTD), Kasturba Gandhi Marg,
New Delhi and resident of M-213,
Sarojini Nagar, New Delhi-110023. Applicant

(By Advocate: Shri S.M. Garg)

versus ..

1. Union of India through
The Director General(Works),
CPWD, Nirman Bhawan, New Delhi.
2. Engineer-in-Chief,
PWD(NCTD),
Kasturba Gandhi Marg,
New Delhi-110001. Respondents

(By Advocate: None)

ORDER

HON'BLE MR. N. SAHU, MEMBER(A)

The applicant prays for the following main
reliefs:-

- (b) declare that the work performed by the Applicant is of perennial nature and the Respondents cannot resort to work order or contract labour system for getting the said work done and further declare that the Applicant is entitled for engagement on regular basis and consequently direct the respondents to engage the applicant on regular basis;
- (c) pass an order directing the Respondents to pay to the Applicant salary at par with his counterparts engaged on regular basis."

2. Respondent no.2, Engineer-in-Chief approved from time to time certain work orders. The applicant applied as an agency for carrying out the work order.

There are several work orders from time to time. The agency has to provide a computer operator who shall be paid monthly through cheques. The terms of contract provided for prescribed duty hours as also overtime payment. His duties are:-

(i) making data entries of inspection works;

(ii) prepare minutes of meeting; progress of works;

(iii) C.T.E., Vigilance and quality assurance cases;

(iv) requirements from Secretary, P.W.D. Offices, approval of plans etc.

3. The period of contract was for two months. The maximum amount payable for the work was Rs.15,000/-. The computer operator was to be paid at the rate of Rs.3,900/- per month. The applicant was deputed by the agency to work as a Computer Operator. On the ground that the work discharged by the applicant was of perennial nature, the applicant wants this court to issue a direction to the respondents to engage him permanently and not on contract basis. He relies on the decision of the Hon'ble Supreme Court in the case of Gujrat Electricity Board, Thermal Power Station, Ukai, Gujrat vs. Hind Mazdoor Sabha and

others. - 1995 (5) SCC 27. He also relies on the decision of the Hon'ble Supreme Court in the case of State of Haryana vs. Piara Singh - 1992 (4) SCC 118.

4. I have carefully considered the submissions of the learned counsel at the admission stage. If the law laid down by the Hon'ble Supreme Court relied upon, were to be applied to this case, it would be a classic instance of misapplication of the principles enunciated by the Hon'ble Supreme Court. I shall sum up the principles laid down in Gujrat Electricity Board's case. The Gujrat Electricity Board deployed, besides direct workmen, 1500 manual labourers through contractors to carry out the work of loading and unloading coal. The factual matrix is that these workers were deployed to carry on the work of loading and unloading of coal and for feeding the same in the hoppers and for doing the cleaning and other allied activities in its power station. The contractors, according to the respondent-Union, exploited these workmen by flouting labour laws. Certain disputes arose between the Board and contractors on the one hand and the workmen on the other. However, some of such disputes were later settled. The parties further agreed that the remaining disputes, which related to the workmen's demand for enforcement of labout enactments as well as the dispute with regard to the workmen's contention that they were the employees of the Board, be referred for adjudication by a joint reference under Section 10(2) of the ID Act. Accordingly, a joint application was made to the Assistant Commissioner of Labour under Section 10(2) of the ID Act requesting him that the disputes mentioned therein be referred for adjudication to the Industrial Tribunal.

Consequently as a reference from the above, the case came up before the Supreme Court. The Industrial Tribunal rejected an objection as to want of jurisdiction and on evidence held that the workmen concerned in the reference could not be the workmen of the contractor and directed them to be deemed to be workmen of the Board and also granted them consequential reliefs. The Tribunal's award was upheld by the High Court. The first three questions arising in the instant appeal were (i) whether the Industrial Tribunal or the appropriate Government had the power to abolish the contract labour system: (ii) whether an industrial dispute could be raised for abolition of the contract labour; and (iii) if so who could raise such a dispute.

5. ^{the above to} It is easy to see the clear inapplicability of the case in hand. The applicant applied as an agency for performing certain data entry work through a computer operator. This contract was approved and the Head of the agency Shri Abhishek Sharma who is the applicant here had been deputed for doing the work. He rendered the work for several periods and executed several work orders. He wants that he should be engaged as a Government servant by the CPWD on regular basis.

6. Nothing can be more amusing than such a contention. We are in a computer age. Every department needs Data Entry Operators, System Analysts, Networking services, Website contracts and maintenance contracts. I personally know that every major department of the Govt. of India has been engaging the services of several reputed firms for doing the jobs mentioned above. Let us take any

department which has All India ramifications. CPWD is one such department who is the respondent before us. The applicant has been invited to do data feeding and allied computer operations in a particular area in Delhi. Several such orders might be placed in other units of the CPWD in other regions or zones. Data entry is a perennial source of work. Each big organisation has to get itself chained into a networking system. Contracts are made for this purpose also and such contractors are engaged at different times, in different areas. Each multi-national does this job of engaging contractor firms. The Govt. also does the same. Simply because Govt. engages an agency, the applicant wants a perennial Govt. job. The next interesting question that would arise is that if tomorrow the Govt. engages one Advocate repeatedly for its work as a retainer, would the advocate demand the job as a Govt. servant simply because the Govt. being the biggest litigant and he having been engaged repeatedly for this purpose, he should be considered for a permanent job. Would it apply to the case of a Doctor or Consultant? These people are skilled professionals. The applicant is also a skilled professional. Today he is doing the job for the CPWD. Tomorrow he can be paid two times more than the present contract amount and be invited by somebody else. If such skilled professionals seek Govt. job simply because they are offered the work-contract repeatedly, to take cognizance of the claim would be a perversion of the law laid down by the Hon'ble Supreme Court. The Hon'ble Supreme Court has interfered only when casual labourers on a mass scale are exploited. They don't have bargaining power. They have to do physical labour day-in and day-out and earn paltry wages to sustain their

livelihood. They do physical, mechanical, routine labour. The Supreme Court has laid down the law for the protection of such economically weaker sections of the labour force. The law laid down would not apply to computer professionals, advocates, doctors, consultants etc.

7. Nothing can be more inappropriate than bringing in Piara Singh's case and Gujrat Electricity Board's case to apply to the case of applicant. The Hon'ble Supreme Court has intervened for thousands of postal workers who were paid a meagre amount year-in and year-out because it felt that they were exploited and needed protection to secure their livelihood. A computer professional is in demand. He can kick out the job offered by the CPWD and be invited in the market by a score of other companies. I am amused to note that the applicant has verbatim brought into his pleadings certain phrases used by the Hon'ble Supreme Court in the cases of other workmen. Nothing can be more far-fetched than a claim of this type.

8. I have no hesitation to say that this O.A. has no merit and is not fit for admission. It is rejected at the admission stage. No costs.

✓ 14/12/90
(N. Sahu)
Member(A)

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