

- 10 -

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.: 1367/2000

New Delhi, this the 31st day of January, 2001

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

Ms. Sujata Mohapatra
D/O Shri Upendra Prasad Mohapatra,
Aged about 25 years,
R/O C/O Shri Krishan Lal Chowdhry,
B-158, Amrit Puri, Gali No.7,
Sant Nagar, East of Kailash,
New Delhi-65.

And employed as

Typist-cum-Clerk in the office
of the Superintending Engineer (Training)
Civil Construction Wing,
All India Radio, Soochana Bhawan,
CGO Complex, Lodhi Road
New Delhi-3.

..Applicant.

(By Advocate: Shri B.B.Raval)

VERSUS

1. Union of India through
The Secretary,
Ministry of Information & Broadcasting,
Govt. of India,
Shastri Bhawan,
New Delhi-1.
2. The Superintending Engineer (Training),
Civil Construction Wing,
All India Radio,
Soochana Bhawan, CGO Complex,
Lodhi Road, New Delhi-3.

.. Respondents

(By Advocate: Shri Gajender Giri)

O R D E R

The applicant in this OA was engaged to do the work of LDC/Typist through a contractor M/s Chand & Construction Company, Engineers & Consultation, Delhi. She was to work in the office of the respondent No.2 She joined work on 12.7.99. Initially, she was engaged for a period of three months. The term was subsequently extended and according to her, she worked for nearly a year, continuously and without break until the aforesaid

2

-11-

(2)

contract under which she had been working was terminated w.e.f. 6.7.2000. On the strength of the aforesaid experience and taking the plea that LDC/Typist work in the office of the respondent No.2 is of a perennial nature and there were regular vacancies available in that office, she has asked for her appointment against a regular post. She has also prayed for quashing of the respondents' letter dated 7.7.2000 by which the aforesaid contract has been terminated w.e.f. 6.7.2000 (AN).

2. The respondents admit that the applicant was engaged in accordance with a contract and the contract in question was to last only three months initially. However, having regard to the availability of work, the aforesaid contract was extended and the applicant kept on working under contract until 6.7.2000. The applicant has placed on record a copy of the letter dated 8.7.99 by which a contract to provide two LDCs was given to M/s. S. Chand & Construction Company, Delhi. The terms and conditions attached thereto indicate that the duration of the contract was to be three months in the first instance. On record is also placed a letter dated 12.7.99 from the aforesaid contractor to the respondents' office which goes to show that the said contractor had made available the services of two LDCs/Typists to the respondents, one of whom is the applicant in the present OA.

3. On the date the applicant was finally disengaged by the aforesaid contractor, i.e., on 6.7.2000 itself, the applicant has filed a representation before the

2

(3)

respondent No.2 seeking her appointment as a LDC on regular basis. In the aforesaid representation, she has raised a presumption that 15-16 vacancies in the cadre of LDC were available in the Divisions functioning under the control of the respondent No.2.

4. She has tried to make capital out of a certain doubt which she has herself raised about the actual date on which she was disengaged. According to her, she worked in the office of the respondent No.2 till 7.7.2000 (AN) though she is stated to have been disengaged w.e.f. 6.7.2000. In the wake of the said doubt, she has advanced the plea that the contract in question was terminated or, in other words, her services were terminated on the same day (i.e. 6.7.2000). She applied for a regular job by backdating the event. This contention has been rebutted by the respondents who contend that the aforesaid contract was terminated telephonically w.e.f. 6.7.2000 and the formal order terminating the contract was thereafter sent on 7.7.2000. A perusal of the respondents' letter dated 7.7.2000 (Annexure A) reveals the same picture, namely, that the contract was terminated w.e.f. 6.7.2000 (AN). The same letter confirms the fact of telephonic termination of the contract as above. Further, the respondents did not stand to lose anything even if the applicant had filed the aforesaid application on 6.7.2000 as she could be appointed regularly only through the SSC in accordance with the prescribed procedure and not straightaway just because she had been working till 6.7.2000 or 7.7.2000. The aforesaid plea taken by the applicant is accordingly rejected.

✓

(4)

5. The respondents have in their reply stated that the work load in the office of the respondent No.2 had registered an increase and accordingly, the services of casual Typists-cum-Clerks were arranged on contract basis. They also admit that consequent upon the formation of Prasar Bharati, regular recruitment to whatever vacancies existed, was yet to commence. They have further contended that for regular recruitment, the candidates are as usual required to be qualified for the post and will have to go through the Staff Selection Commission (SSC) in accordance with the prescribed procedure. According to them, the applicant is free to apply for a regular post as and when regular recruitments in the office of the respondents commence. Of course, she will have to come through the SSC as stated as the said Commission is the agency through which recruitments will be made. According to the respondents, due to the formation of the Prasar Bharati, recruitments to various posts have been kept in abeyance pending formulation of recruitment rules, and this is the reason why regular recruitments have been delayed.

6. The learned counsel appearing for the applicant has vehemently argued that the respondents have been exploiting people like the applicant by procuring their services on contract instead of making regular appointments in vacancies which admittedly exist. While working under a contractor, according to him, the applicant has been exploited in more than one sense. More importantly, she ends up getting very little amount

2

by way of monthly emolument. The nature of work available with the respondents, according to the learned counsel, is obviously of a perennial nature and, therefore, having recourse to the system of contract is illegal besides being exploitative. He has further contended that the contractor in this case is a mere name-lender and the contract itself is a sham. He has placed reliance on the observations made by the Hon'ble Supreme Court in the case of Secretary, Haryana State Electricity Board Vs. Suresh & Ors., reported as JT 1992 (2) SC 425. Much to the same effect, he has also made a reference to the cases of Civil Welfare Board & Ors. Vs. Anjali Bepari (Ms.) & Ors., reported as 1996 SCC (L&S) 1358 and Gujarat Electricity Board, Thermal Power Station, UKAI, Gujarat Vs. Hind Mazdoor Sabha and Ors., reported as (1995) 5 SCC 27. I find that the essential principle laid down in the aforesaid judgements of the Hon'ble Supreme Court will find application, if it could be shown for a fact that the contractor in the present OA is a mere name-lender or if it could be established that the entire contract is a sham. I find, no such attempt has been made by the learned counsel for the applicant. The identity and the existence of the contractor has not been questioned. The fact that the applicant was engaged through the said contractor and all along worked under the same contractor has been admitted. The corresponding contention raised by the applicant is rejected.

7. Insofar as the nature of work, being of perennial nature, is concerned, the learned counsel for the respondents has drawn my attention to the provisions of

2

(6)

Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The explanation placed below the aforesaid Section provides as follows:-

"Explanation - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government therein shall be final." (emphasis supplied)

By exercising power under the aforesaid Section 10, the appropriate Government can prohibit employment of contract labour in any process or operation or other work in any establishment which is inter alia of a perennial nature. Such prohibition is to be notified by the appropriate Government after consulting the Central Board. Before issuing a notification as above for prohibiting employment of contract labour, the appropriate Government is required to have regard, inter alia, to certain relevant factors. One such factor is the nature of work, i.e., before a notification is issued, it is to be seen whether the work is of a perennial nature. That is to say whether it is of sufficient duration having regard to the nature of industry, etc. or occupation carried on in the concerned establishment. According to the explanation (Section 10) reproduced above, on the question whether any work performed in an establishment is of a perennial nature, the decision of the appropriate Government shall be final. The applicant has not placed on record any such decision taken by the appropriate Govt. The argument advanced by the learned counsel for the applicant with regard to the perennial nature of work, is, therefore, rejected. *2*

(7)

8. The learned counsel for the respondents has placed reliance on the order of the Chandigarh Bench of this Tribunal in Pan Singh Vs. Union of India & Ors. (OA-650/CH/99), decided on 8.5.2000 which, according to him, covers the present OA and in which the applicant's plea based on the same set of arguments as have been advanced in the present OA by the learned counsel for the applicant, were found untenable and were rejected. I have perused the same and find that in that OA, the applicant was a Driver who had been engaged through a contractor and who had claimed that a regular post of Driver being available in the office of the respondents, he should be regularly appointed rather than being made to work under the contractor. He had also claimed that the nature of work involved was of a perennial nature. The judgement/order in the case of Secretary, H.S.E.B. (Supra), was also cited and duly considered in that OA. Furthermore, the respondents' counsel has also claimed that their office is not an 'establishment' as defined in the aforesaid Act and, therefore, the provisions of that Act ~~will not~~ ^{will not} apply in this case.

9. After a careful consideration of the matter, I find myself fully in agreement with the learned counsel for the respondents and hold that the present OA is covered in almost every respect by the aforesaid order of this Tribunal passed by the Chandigarh (Division) Bench. I find myself bound by the ratio laid down in that order and accordingly hold that there is no force in the arguments advanced by the learned counsel for the applicant.)

(8)

10. Having regard to the facts and circumstances discussed in the proceeding paras and the conclusion reached, the present OA is found to be devoid of any merit and is dismissed. No costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

/sunil/