

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2527/2000
WITH
OA NOS. 2529/2000 & 2622/2000

New Delhi, this the 26. day of November, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

OA NO.2527/2000 :

1. Sunil Kumar,
S/o Sh. Ramand Rai,
R/o E-26, IARI PUSA
New Delhi
2. Raj Kumar Paswan,
S/o Shri Ram Chandra Paswan,
R/o 839, Krishi Kunj,
PUSA, New Delhi
3. Kishan Kumar
S/o
R/o C-303, Budh Nagar,
J.J. Colony, Inderpuri,
New Delhi
4. Manoj Kumar
S/o Ramesh Chandra,
R/o C-21-B, Anand Vihar,
Uttam Nagar, Delhi
5. Vishan Dev Rai,
S/o Amiree Lal Rai
R/o E-26, IARI PUSA,
New Delhi
6. Vijay Kumar
S/o Pashuram Rai
R/o A-101, Bundapur,
J.J. Camp, Janakpuri,
New Delhi

(All the applicants are working as Wireman in
Estate Maintenance Cell, Electrical Enquiry Office, IARI,
P(USA, New Delhi)

.... Applicants

(By Advocate : Shri Chittranjan Hati)

Versus

1. The Union of India
Through The Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi
2. I.C.A.R. through its Secretary
Krishi Bhawan, New Delhi
3. I.A.R.I. through its Director,
PUSA, New Delhi-12

4. M/s. Gogia Brothers
 Contractor, Estate Maintenance Cell
 IARI, PUSA, New Delhi
 .. Respondents
 (By Advocate : Ms. Anuradha Priyadarshini)

Q.A. No.2529/2000 :

1. Jone Prakash Tigga,
 S/o Late Shri Najroos Tigga,
 R/o C-45, Bhola Ram Colony,
 Pochanpur, New Delhi
2. Arvind Kumar,
 S/o Shri Brahma Nad Rai,
 R/o 1642, Krishi Kunj,
 IARI PUSA, New Delhi
3. Rakesh Kumar,
 S/o Shri Ram Lalin Mehto,
 R/o E-891, Maangolpuri,
 New Delhi
4. Vijay Kumar,
 S/o Shri Parshuram Rai,
 R/o A-101, Bindapur, J.J. Colony,
 Janakpuri, Delhi
5. Mahesh Kumar,
 S/o Shri Sehdev Rai,
 R/o 804, Krishi Kunj, IARI PUSA,
 New Delhi

(All the applicants are working as Helper, Estate Maintenance Cell, Electrical Enquiry Office IAARI, PUSA, New Delhi)

Co. Applicants
 (By Advocate : Shri Chittranjan Hati)

Versus

1. The Union of India
 Through The Secretary,
 Ministry of Agriculture,
 Krishi Bhawan, New Delhi
2. I.C.A.R. through its Secretary
 Krishi Bhawan, New Delhi
3. I.A.R.I. through its Director,
 PUSA, New Delhi-12
4. M/s. Gogia Brothers
 Contractor, Estate Maintenance Cell
 IARI, PUSA, New Delhi

.. Respondents
 (By Advocate : Ms. Anuradha Priyadarshini)

Q.A. NO.2622/2000 :

Yogender Kumar
 S/o Shri Jai Pal Singh,
 R/o 1629, IARI, PUSA,
 New Delhi

(The applicant is working as Electrician in Estate Maintenance Cell, Electrical Enquiry Office, Krishi Kunj, IARI, PUSA, New Delhi)

.... Applicant

(By Advocate : Shri Chittranjan Hati)

Versus

1. Union of India,
Through the Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi
2. I.C.A.R. through its Secretary
Krishi Bhawan, New Delhi
3. I.A.R.I. through its Director,
PUSA, New Delhi-12
4. M/s. Manoj
Contractor, Estate Maintenance Cell
IARI, PUSA, New Delhi

.. Respondents

(By Advocate : Ms. Anuradha Priyadarshini)

O R D E R

These three OAs raise similar issues of law and facts and are, therefore, taken up for disposal by this common order.

2. The applicants in these OAs, six in OA No.2527/2001, 5 in OA 2529/2001 and 1 in OA 2622/2001, have been working respectively as Wiremen, Helpers and Electrician in the Office of IARI, PUSA, New Delhi (respondent No.3 herein) for varying periods of time. Those working as Wiremen (OA 2527/2001) are stated to have been so working for the last three years and those working as Helpers (OA No.2529) also for three years. The lone applicant in OA 2622/2001, however, claims to have started working from 1999. All the applicants are stated to have completed more than 240 days of working in a year thereby becoming entitled for conferment of

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temporary status. While admittedly working through a contractor, the applicants state that they have been rendering their services under the direct supervision of the Estate Maintenance Cell Officer of IARI, PUSA, New Delhi. They also state that the Attendance/Duty Register in respect of the applicants together with the work done by them is directly regulated by the Office of the Estate Department of IARI. Further, the applicants claim that in terms of the decisions rendered by the High Court of Delhi in CWP Nos. 5257/1999, 5388/1999, etc., their services should have been regularised by the respondents. The prayer made is that the services of the applicants be directed to be regularised treating them as permanent and regular employees of the respondents 1 to 3. By way of evidence of the services rendered, the applicants have placed on record a few stray sheets which, according to them, show that they have been performing the duties assigned to them on day-today basis. The sheets thus placed on record cover only a few selected days on which the applicants may have performed their duties. The same do not cover any length of period. These sheets have been prepared, according to the applicants, by the Office of the official respondents. This fact has been denied by the respondent-authority who claim, on the other hand, that these might have been prepared by the applicants themselves or by the contractor. Respondents also deny that the applicants ^{+ have} completed more than 240 days in a year. Existence of master-servant relationship between the applicants and the official respondents is also categorically denied by the respondents. The respondents also insist that since the applicants have been engaged

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through a contractor properly and legally, there could be no question of the official respondents dealing with the applicants directly. The services rendered by the applicants have been compensated by the contractor and never by the official respondents. ^{✓ No} Notification has been issued under section 10(1) of the Labour Contract Regulation Act, 1970, prohibiting engagement of contract labour for the kind of work which the applicants performed. There was, thus, no illegality involved.

3. OA Nos. 2527/2000 and 2529/2000 had come up for hearing on 30.11.2000 when an ad-interim order was passed in the following terms:-

"We have considered the matter and we find that for the time being the interest of justice will be met if we direct the respondents to ensure that the services of the applicants are continued to be engaged through the contractor subject to availability of work from tomorrow onwards in preference to outsiders/freshers /juniors. Engagement of freshers/juniors /outsiders if resorted to for valid reasons, the same will be subject to further orders to be passed in the OAs."

The third OA No.2622/2000 first came up for hearing on 15.12.2000 when having regard to the aforesaid interim order passed, a similar interim order was passed in the following terms:-

"i) The respondents are directed to ensure that the services of the applicant are continued to be engaged through the contractor subject to availability of work in preference over outsiders/freshers/juniors. Engagement of freshers/outsiders/juniors, if resorted to for valid reasons, will be subject to further orders to be passed in this OA."

4.. The learned counsel appearing on behalf of the applicants in all these OAs has, in support of the applicants' claim, sought to place reliance on the law laid down by the Supreme Court in Steel Authority of India Ltd. & Ors etc. etc. v. National Union Water Front Workers & Ors etc.etc. decided by that Court on 30.8.2001 and reported in JT 2001 (7) 268. He has in particular relied on the following:-

"(5) On issuance of prohibition notification under section 10(1) of the CLRA Act prohibiting employment of contract labourer or otherwise, in an industrial dispute brought before it by any contract labourer in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labourer will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para 6 hereunder."

5. It is clear from the above that the applicants could take advantage of the law laid down by the Supreme Court only if the contract, according to which the applicants have been working, was found to be not genuine but a mere camouflage. After a careful consideration of the facts and circumstances of this case including those brought out in para 2 above, I find it extremely difficult to conclude that the aforesaid contract was in any way a ruse or camouflage. The applicants have themselves nowhere asserted that the aforesaid contract

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was a fraud or that the contractors were mere name lenders. The applicants have also nowhere asserted that the work involved was of a perennial nature. Furthermore, they have not pointed out that vacancies exist in the Office of the official respondents against which they could be regularised. Admittedly, a notification under section 10(1) of the CLRA Act, 1970 has not been issued by the appropriate Government. In sum, therefore, there is no substance in the claims preferred by the applicants in any of the OAs.

6. In support of the applicants' claim, the learned counsel ^{also} places reliance on the order passed by this Tribunal on 23.8.2001 in OA No.615 of 2001, and also on judgements rendered by the Supreme Court in Union of India and Ors vs. M. Aslam and Ors., in G.B. Pant University of Agriculture & Technology, Pantnagar, Mainital v. State of Uttar Pradesh & Ors decided on 10.8.2000 and Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors. decided on 4.8.1999. He has also placed reliance on Supreme Court's decision dated 28.7.1978 in Hussainbhai v. The Factory Iezhilali Union and Ors. reproduced in 1978 LAB. I.C. 1264. The learned counsel for the respondents has on the other hand placed reliance on the order passed by this Tribunal on 17.8.2001 in OA Nos. 1428, 1429, 1430, 1431 and 1432 all of 2001. Insofar as the judgement of this Tribunal dated 23.8.2001 (OA 615/2001) is concerned, a perusal of the same reveals that, while considering the matter the Tribunal had taken due note of the averments made on

behalf of the applicants in that OA that plenty of work of a perennial nature was available in the respondents' set-up. On that basis, this Tribunal had arrived at the conclusion in that OA that on lifting the veil a direct connection could be seen to exist between the employer-respondent and the employee-applicants and it would be impossible to distinguish the relationship between them from the relationship which normally exists between a master and a servant. The circumstances obtaining in the present OA nowhere approximate to the circumstances aforementioned and, therefore, the applicants' case cannot find support from the aforesaid order dated 23.8.2001. The aforementioned judgements rendered by the Supreme Court are all distinguished on facts as well as in the variety of circumstances prevailing in those cases. The Supreme Court's judgement in Hussainbhai (supra) has already been relied upon by the Tribunal in the aforesaid OA No. 615/2001 and, therefore, this judgement of the Supreme Court also cannot assist the applicants. The judgement rendered by this Tribunal in OA Nos. 1428 to 1432 and relied upon by the respondents, on the other hand, however, clearly support the case of the respondents. The applicants in the aforesaid 5 OAs are similarly placed to the applicants in the present OAs. By relying on the High Court's judgement in ICM Engineering Workers Union Vs. Union of India, 2001 (1) SCT 1043, the aforesaid 5 OAs were dismissed on the ground of lack of jurisdiction. The present OA must meet the same fate.

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7. For the reasons mentioned in the preceding paragraphs, the OA are found to be devoid of merit and are dismissed. There shall be no order as to costs.

S.A.T. RIZVI

(S.A.T. RIZVI)
Member (A)

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