

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.878/2000

New Delhi this the 6th day of December, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN

Ishwari Dutt Malkani,
S/o Sh. Bhawani Dutt Malkani,
R/o E Block 40-A,
East Vinod Nagar,
Delhi-91.

...Applicant

(By Advocate Mrs. Rani Chhabbra)

-Versus-

1. Union of India through
its Secretary,
Ministry of Communication,
Department of Telecommunication,
Sanchar Bhawan,
New Delhi.
2. Chief General Manager,
Telecom, Chandigarh.
3. General Manager Telecom,
Distt. Ludhiana, Ludhiana.
4. Divisional Engineer Telecom,
Opp. Manlakha Cinema,
Ludhiana.
5. Sub Divisional Engineer,
Opp. Manlakha Cinema,
Ludhiana.

...Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R (ORAL)

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

Heard the learned counsel for the applicant and the respondents.

2. The applicant was a casual labourer working in the Telecommunication Department since 1995 to 1999 and was discharged thereafter. He filed the present OA, seeking temporary status in terms of the Telecommunication Department Scheme under which if a person has worked as casual labourer for 240 days he is entitled for grant of temporary status.

(2)

3. In the reply a preliminary objection is taken that the applicant is not the employee of the Department, but only engaged through a registered contractor. Hence, the OA is not maintainable, as the employees of contractors cannot be called as civil servants and invoke the jurisdiction of the Tribunal. It is also contended that the said Scheme has no application to the applicant. *As*

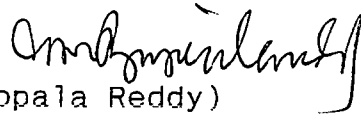
4. I have given careful consideration to the arguments advanced by either side. The learned counsel for the respondents Shri K.R. Sachdeva invites my attention to Annexure R-2 where the list of tenderers to whom the contracts were awarded for supply of manpower. It shows that two registered contractors M/s Man Singh Aneja and M/s Luxman Security Servides (Regd) were the two registered contractors to whom the supply of man power was awarded. It can, therefore, be presumed that the applicant was one of the man supplied by ~~the one~~ of the contractors to the Department. But it is not in dispute that the applicant has been engaged as a peon and he has been working since 1995 till August, 1999 when he has been dis-engaged. The work of a peon in the department cannot be said to be a seasonal nature. The peons are necessary in a Department and their work can be said to be perennial nature. In Secretary, Haryana State Electricity Board v. Suresh & Others, JT 1999 (2) SC 435 the Supreme Court considered the scope ~~of~~ ^{and} amplitude of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, Act), particularly Section 10 of the Act. It was observed that the Act does not provide for the abolition of the contract labour. The Court ^{however} held:

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"There is however, a total unanimity of judicial pronouncements to the effect that in the event, the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being of perennial in nature, that is to say, in the event of engagement of labour force through intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since, involvement of contractor may have its social evil of labour exploitation and thus the contractor ought to go out of scene bringing together the principal employer and the contract labourers rendering the employment as direct, and resultantly a direct employee. This aspect of the matter has been dealt with great lucidity, by one of us (Majumdar, J.) in Air India Statutory Corporation etc. v. United Labour Union & Ors. etc. [JT 1996 (11) SC 170]."

5. The ratio of the decision in the above case, therefore, squarely applies to the facts of the present case. The applicant has been engaged in a work of perennial nature. Hence, he cannot be ~~said to have been~~ engaged through a contractor ^{which} is not permitted under the Act. The learned counsel for the respondents, however, relies upon the decision of the division Bench of the Chandigarh Bench of the Tribunal in OA No.365/Ch/99, Ram Pal Singh & Others v. U.T. Chandigarh through Secretary to Govt., Department of Engineering, Chandigarh Admn. Chandigarh & Others decided on 13.8.99, where Section 10 of the Act was considered and the above judgement of the Supreme Court was also considered. The Supreme Court judgement was distinguished on the ground that Sh. Kashmir Singh, Contractor in the case of the Supreme Court was ^{not} a licenced contractor under the Act but the same was not the case with the contractor in the case before the Chandigarh Bench. ~~But~~ In the present case also though the contractors are registered contractors, it is not shown that they are licenced under the Act. Hence the distinction drawn by the Chandigarh Bench cannot come to the help of the respondents

in the present case. The O.A., therefore succeeds. The respondents shall consider the case of the applicant for engagement within a period of two months from the date of receipt of a copy of this order, granting the benefit of temporary status, in accordance with the Scheme. No costs.



(V. Rajagopala Reddy)
Vice-Chairman (J)

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