

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 2nd day of Nov 2010

Original Application No. 407 of 2006

Hon'ble Mr. S.N. Shukla, Member (A)

1. Veeresh Kumar, S/o Sri Ram Khiladi, R/o Village – Karbana Post – Dandu Pura P.S. Tajganj, Distt: Agra.
2. Suresh Chandra, S/o Shri Natthu Singh, R/o Village Karbana, Post – Dandu Pura P.S. Tajganj, Distt: Agra.

..... Applicants

By Advocate: Sri Rakesh Verma

V E R S U S

1. Union of India through the Secretary, Ministry of Health and Planning, Nirman Bhawan, New Delhi.
2. The Director General, Indian Council of Medical Research, Ansari Nagar, New Delhi.
3. The Director, Central Jalma Institute of Leprosy, P.S. Tajganj, Distt: Agra.

..... Respondents.

By Advocate: Shri M.B. Singh

O R D E R

Written submission on behalf of the applicant and CA relief upon by the learned counsel for the respondents.

The brief facts of the case are that both the applicant were initially engaged as casual labour (Mali) from open market after screening w.e.f. 10.02.2004 and continued to work thereafter, albeit, in some what altered capacity as will be discussed below. After successfully challenging interruption in their employment in OA No. 1134 of 2005 (disposed of by this Tribunal by the order of the same date as in this case) by order dated 04.04.2006 (Annexure A-1 to the

OA) the engagement of the applicants was modified as per the terms and conditions indicated therein in an order as follows:-

“राष्ट्रीय जालमा कुछ एवं अन्य माझकोबैकटीरियल रोग संस्थान
ताजगंज आगरा
सं. ०० दिनांक ०४.०४.२००६
कार्यालय आदेश

संस्थान के विभिन्न लॉन गार्डन क्यारियों एवं अन्य फूल पौधों के रख रखाव एवं विकास को सुव्यवस्थित करने हेतु इस कार्य को संस्थान में चल रहे अन्य अनुरक्षण कार्यों की तरह कान्टेक्ट पर देने को निश्चय किया गया है।

1. यह व्यवस्था फिलहाल तीन माह के लिए अस्थाई है, जिनका नवीनीकरण किया जा सकता है।
2. कार्य के आकलन के आधार पर वर्तमान में कार्यरत श्रमिकों को दर्शाये गये क्षेत्र हेतु कार्य पर कान्टेक्ट द्वारा लगाया जाता है जिसके लिए उन्हे एक माह में 26 कार्य दिवसों (आठ घटे प्रतिदिन) के लिए रु 2700 धनराशि दी जायेगी। कार्य दिवस कम अथवा अधिक होने पर इसी के अनुरूप धनराशि कम या अधिक हो सकती है यह कान्टेक्ट दिनांक ०७. ०४.०५ (१०.०४.०६ से बाद नहीं) या जब भी हस्ताक्षरित हो नान ज्यूडिशियल स्टाम्प पेपर पर साईन होने पर लागू हो जाएगा।
3. प्रतिदिन के कार्य कप ब्लौरा निर्दिष्ट कर्मचारी/अधिकारी को देना होगा।
4. उपरोक्त कान्टेक्ट कभी भी दोनों पक्षों में से किसी एक द्वारा एक माह के नोटिस पर खत्म किया जा सकता है।
5. संस्थान एवं कार्यरत व्यक्ति कार्य के दौरान किसी प्रकार की काम में कभी आने की शिकायत आने पर अथवा नुकसान होने पर आवश्यक कार्यवाही की जायेगी उसके अनुसार उनके कान्टेक्ट फीस से कटौती की जाएगी जिसके लिए श्रमिक स्वयं जिम्मेदार होगा।
6. कलैण्डर माह के कार्यों का सत्यापन होने पर अगले माह 10 तरीख तक भुगतान कर दिया जायेगा।
7. पूर्व सूचना के बगैर कार्य पर न आने पर सम्बन्धित श्रमिक को हटाया या कार्य मुक्त किया जा सकता है। श्रमिकों को कार्य अवधि में अपने निर्धारित क्षेत्र में ही उपस्थित रहना आवश्यक है जिसकी समय सारिणी संस्थान द्वारा अलग से जारी की जायेगी।
8. आवश्यक टूल्स एवं अन्य सामग्री के लिए सम्बन्धित रेगूलर गाली जिम्मेदार होने और प्रत्येक प्रातः सम्बन्धित सामान को प्राप्त कर लाभ को पुनः वापिस करना सुनिश्चित करेंगे। घास काटाने की मशीन की लॉग बुक रखी जाएगी।
9. इस कान्टेक्ट पर कार्य करने में भविष्य में नौकरी इत्यादि किसी भी तरह की जिम्मेदारी संस्थान एवं आई सी एम आर की नहीं होगी। यह कार्यकाल सिर्फ कार्यकुशलता के आंकलन के काम आयेगा।

आवंटित क्षेत्र आदि का विवरण संलग्न है।

हां
निदेशक

प्रतिलिपि:-

1. सभी संबंधित श्रमिक/माली
2. संबंधित फाईल।"

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2. It is submitted by the learned counsel for the applicant that by means of the aforesaid order status of the applicants have been unilaterally converted into a contractual employee purely with a view to frustrate the chances of regular employment in future. After having been appointed on selection from open market the applicants acquired some prescriptive rights of possible benefit in future in view which is sought to be squashed under the garb of "a contract".

3. It is submitted that from the pleadings of rival sides it is manifestly apparent that the requirement of Mali is of permanent and perennial nature given the expanse of the premises of the respondents. The condition of service laid down in impugned order dated 04.04.2006 leaves no doubt that there is a relationship of Master and Servant and also control over the work and conduct of the applicants. It is significant that there is no contractor between the applicants and the respondents and that the payments are made to the applicants directly. In other words the artificial 'contract' created by the respondents is just a camouflage.

4. In support of his contention the learned counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in case of ***Ram Singh and others Vs. Union Territory, Chandigarh & Ors. : 2004 SCC (L&S) 14.*** The head notes are as under:-

"A. Regularisation – Contract labour – Contract employees, who were trained electricians, employed in the substation to maintain supply of electricity, claiming regularisation of their services under the Engineering Department of the Administration – Such a contract whether genuine, sham or camouflage – Determination of – Held, can only be determined by the industrial forum since it involves a finding as to the inter se relationship between the Administration, the contractor and the contract employees – Constitution of India, Arts. 226 and 136 – Question of fact – Industrial Disputes Act, 1947, S. 10

B. Employer – employee relationship – Determination of – Multiple pragmatic approach stressed – Factor to be

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considered, *inter alia*, are: (i) "control", (ii) "integration" i.e. whether the employee has been fully integrated in the employer's concern or is independent of it, (iii) power of appointment and dismissal, (iv) liability to pay remuneration and deduct insurance contributions, (v) liability to organize to work and supply tools and materials, (vi) nature of mutual obligation, and (vii) terms and conditions of contract – Master and Servant - Test

C. Employer-employee relationship – Principal employer and contract labour – Nature of their relationship – Where the employer retains control over the means and work to be done by the contractor, held, an employer-employee relationship exists – In such circumstances, the creation of contract labour will be considered as a sham or camouflage and employer will not be relieved of his liability – Contract Labour (Regulation and Abolition) Act, 1970, S. 2(1)(b), (c), (e) and (g)"

Reliance has also been placed in yet another case of Hon'ble Supreme Court in case of *Commissioner, Kendriya Vidyalaya Sangathan And Others vs. Anil Kumar Singh and others : 2004 scc (I&s) 206*. The head note of the same is as under:-

"Appointment — Contractual appointment — Respondents seeking direction from High Court that their services should not be terminated after the expiry of contractual period until the regular recruitment is made to the posts — High Court allowing the said relief and permitting the respondents to apply for the regular appointment in future provided they possess necessary qualifications as required therefor — Benefit of work experience gained during the contractual period not however to be availed — Directions issued by the High Court, held, do not call for interference — Words and phrases — "if they are otherwise not disqualified"

5. It is prayed that the impugned order dated 04.04.2006 be quashed and respondents be directed to restore the status of the applicants as casual labour (Mali) and consider them for regularization in accordance with rules/law as and when applicable.

6. In the counter affidavit the allegations of resorting to camouflage with an object to frustrate the future prospects of the applicants are denied and it is averred that the best practice suited to the organization is being followed, wherever, as and when required. Further that most of the work is handled by regular staff and also by CPWD and occasionally by casual workers/casual staff on case to case basis. It is also submitted that the institute has not acted in any

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arbitrary manner in hiring/re-hiring these workers/applicants either as casual workers and now as contract worker to define the specific job and that they will also be eligible to apply when regular selection is made.

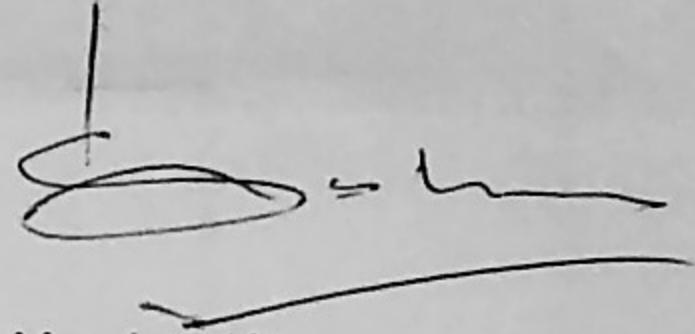
7. Heard learned counsel for the parties and perused the pleadings on record. Admittedly, the applicants are engaged w.e.f. 10.02.2004 barring short spell of 07 days and continued to be in the engagement of the respondents, albeit, in an altered capacity on a contract basis as per the impugned order. Even though in para 1 of the impugned order it is stated that this arrangement was temporary and valid for 03 months subject to further renewal, admittedly, the arrangement continues till date. The terms and conditions as indicated in the impugned order clearly stipulate a fixed monthly payment, supervision by the officers of the organization, the right of the employer to take necessary action in the event of deficiency in performance, compulsory presence of applicants within designated area, and a time table issued by the respondents. In addition the handling of the tools was also to be regularized as per para 8 of the order. No doubt para 9 of the order categorically specified that even while the organization will not be obliged to assure any employment etc in future. The time spent by the applicants with the organization will be relevant for assessing the competence of the applicants as and when warranted.

8. A perusal of the ratio laid down by Hon'ble Supreme Court in Ram Singh's case (supra) guides this Tribunal to take a view that the case of the applicants ^{are} ~~is~~ not only covered by the decision of the Hon'ble Supreme Court but also one stage better in as much as the

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applicants were initially engaged as casual labour and continued to be engaged in the same capacity in a modified form, in as much as the applicants themselves being treated as the contractors. The impugned order has all the characteristics of a subterfuge with an intent creating an artificial obstacle in the future prospects of the applicants.

9. In view of the above decisions the respondents are directed to treat the applicants as casual employees and consider them for all future benefits which may accrue to them by virtue of they being in the employment as casual labour from the date of their initial engagement. The impugned order dated 04.04.2006 is quashed and set aside. Accordingly, the OA is allowed. No cost.

A handwritten signature consisting of a stylized oval shape with a vertical line extending from its top, followed by a series of curved and straight lines to the right.

Member (A)

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