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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

Date of Decision :28.09.2001

1. OA No. 369/1999.

Prakash Bhardwaj s/o Shri Jagdish Prasad Sharma r/o Ward No. 27, Suratgarh, district Sriganganagar A.C. Plant Operator, MES, Suratgarh.

2. OA No. 370/1999.

Mahmood Alam s/o Shri Jamaludeen by caste Abbasi (Muslim), R/o C.S.F. Colony, House No. 38, Suratgarh, district Sri Ganganagar, A.C. Plant Operator MES Suratgarh.

3. OA No. 371/1999.

Mahender Singh s/o Shri Het Ram by caste Sai (Jat), R/o Manaktheri Tehsil Pilibanga, District Hanumangarh A.C. Plant Operator, MES, Suratgarh.

4. OA No. 372/1999.

Ramji Singh, s/o Shri Rek Narain Singh, R/o Suratgarh, district Sri Ganganagar. A.C. Plant Operator, MES Suratgarh.

5. OA No. 373/1999.

Pawan Kumar s/o Shri Durga Dutt Sharma R/o Pilibanga District Hanumangarh, A.C. Plant Operator, MES, Suratgarh.

6. OA No. 374/1999.

Raj Kumar s/o Shri Munni Lal Saini by caste Saini, R/o V.P.O. Guravara, Tehsil Suratgarh, district Sri Ganganagar, A.C. Plant Operator, MES, Suratgarh.

7. OA No. 375/1999.

Ajay Kumar S/o Shri Ram Prakash Srivastava R/o Q.No. E/38-A, Railway Colony, Suratgarh, district Sri Ganganagar, A.C. Plant Operator, MES Suratgarh.

8. OA No. 376/1999.

Hans Raj s/o Shri Meer Chand ji R/o Suratgarh, district Sri Ganganagar, A.C. Plant Operator, MES Suratgarh.

9. O.A. No.377/1999.

Rakesh Sharma S/o Shri Deshraj Sharma R/o H.No. 229, Ward No. 26, Suratgarh, district Sri Ganganagar, A.C. Plant Operator, MES, Suratgarh.

... APPLICANTS.

versus

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1. Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. Garrison Engineer, MES, Suratgarh, Distt. Sriganganagar.

3. Saraswati Electronics through Proprietor Shri Jethu Singh Rajpurohit, Pilibanga Distt. Hanuman garh.

... RESPONDENTS.

CORAM :

HON'BLE MR. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN.
HON'BLE MR. A.P.NAGRATH, ADMINISTRATIVE MEMBER.

For the Applicants — Mr. C. S. Kotwani

For the Respondents 1 & 2 — Mr. M.A. Siddiquim proxy counsel for Mr. N.M. Lodha

For Respondent No. 3 — None

O R D E R

PER HON'BLE MR. A.P.NAGRATH, ADMINISTRATIVE MEMBER

This batch of nine applications is being disposed of by this common order as the applicants in these OAs are similarly placed and the relief sought by them is the same.

2. The case of the applicants, in brief, is that they are working as A.C. Plant Operators for more than 2½ years and they deserve to be regularised on that post w.e.f. the date of their initial appointment with all consequential benefits.

3. Learned counsel for the respondents raised a preliminary objection about the maintainability of these applications on the ground of jurisdiction of

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this Tribunal. His plea was that the applicants are employees of the contractor M/s Sarswati Electronics and do not hold any post under the Government. Learned counsel for the applicants, on the other hand, stated that the applicants, though employed through the agency of the contractor, are actually engaged on the regular work of the department which is perennial in nature and that they have put in more than 240 days in a year and are thus entitled to be regularised by respondent No.2 i.e. Garrison Engineer, MES. The learned counsel placed reliance on the judgment of the Hon'ble Apex Court in Secretary, Haryana State Electricity Board vs. Suresh & Others etc., JT 1999 (2) SC 435, to contend that since the nature of work of the applicants is perennial and regular, the contract labour, in such a situation necessarily has to be abolished and the workers regularised against the post on which they are working.

4. We find from the averments of the applicants that they are working as contract labour of respondent No. 3. Their averments in para 4(B) in the application are reproduced below :-

> "(B) That the applicant has been working as A.C. Plant Operator for more than 2½ years with respondent No.2. Previously he had worked under Pioneer Engineering Contractor as a contract labourer. At present he is working as a contract labourer of respondent No. 3."

5. Respondent No.3 is Sarawati Electronics through Proprietor Shri Jethu Singh Rajpuronit. By the applicant's own admission, they are employees

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of the Contractor and Sarswati Electronics has been impleaded as a respondent. The question whether the applicants are actually doing the work of regular nature or perennial nature and whether they should be considered as regular employee of the MES is not the one that this Tribunal can decide under Section 14 of the Administrative Tribunals Act. For immediate reference we are extracting Section 14 as under :-

" 14. Jurisdiction, powers and authority of the Central Administrative Tribunal-(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to -

(a) .....

(b) all service matters concerning -

(i) a member of any All India Service; or

(ii) a person (Not being a member of an All India Service or a person referred to in clause(c)) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian (not being a member of an All India Service or a person referred to in clause a e

(c)) appointed to any defence services or a post connected with defence.

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government."

6. From the pleadings of the applicant, it is clear that they are not holding any civil post under the Central Government. In fact as per Para 4 (b) in the OA, they are contending that applicants are working as contract labourer under the contractor respondent No3.

If that is so, this Tribunal has no jurisdiction to entertain these applications. Whether the work on which they are working as contract labourer is of perennial nature or whether the contractor under whom they are working is a registered and recognised contractor etc., are the matters of ~~xxx~~ evidence , and there is a different forum to decide the same. So far as the Contract Labour(Regulation & Abolition) Act, 1970, is concerned, there is no such provision of any regularisation of a contract labour as employee of the management. However, the learned counsel relied upon the judgment of Hon'ble the Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh & Ors. etc. etc., JT 1999 (2) SC 435. That was a case in which the contract labour had approached the labour court and the labour court on evidence held that they were infact the employees of the management and the contractor was only name lender. By applying the principle of lifting wheel ~~xxx~~ the Hon'ble High Court found that such contract labour was infact the employees of the management and Hon'ble the Supreme Court upheld such conclusions of the High Court. From the said judgment itself it is clear that, it is ~~left~~ open for the applicant to approach the labour court and lead evidence regarding the dispute, that they have raised in these applications but so far as this Tribunal is concerned, it has no jurisdiction to entertain these applications which involves disputed questions of facts ~~xx~~ which require evidence. Since the applicants are not the civil servants under the Central Government, we have no option but to reject these applications as not maintainable.

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7. We, therefore, dismiss these applications for want of jurisdiction. The applicants are however free to approach the appropriate forum, if so advised. No order as to costs.

sd/-
(A.P.NAGRATH)
Adm. Member

sd/-
(JUSTICE B.S RAIKOTE)
Vice Chairman

प्रमाणित सही प्रतिलिपि
04/10/2001
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर