

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 189/2000

the 24th day of APRIL 2001

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

1. Ramesh Dinkar Shelke
Residing at 211,
Ganesh Khind Road,
Pune.
2. Chhaburao Ramchandra Jagtap
Residing at
Bapu Kate chawl,
Ward No.5, Dapodi,
Pune.
3. K. Raman
Residing at
NCL colony,
B-5, Pashan, Pune.
4. Santaji Kisan Buchade
Residing at
Post Maruji Tal Mulshi
Dist. Pune.
5. Arun Sopan Nimhan
Residing at
Pashan Road, Pune.
6. Pandurang Ranba Lagade
Residing at Sindh Society,
Aundh, Pune.
7. Viraiyya Daubasayyayswami Juktimath
Residing at
C/o BCL Pashan, Pune.
8. Dattu Raut
Residing at
C/o NCL, Pashan, Pune.
9. Nana Taghunath Khamkar
Residing at
Bouddha Vasti,
Pashan, Pune.
10. Sampat Tulshiram Gaikwad
Residing at
Kumbhar Wada, Pune.

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11. Kalidas Govardhan Gore
Residing at
Post Punawale
Taluka Mulshi, Dist. Pune.
12. Naresh Harisingh Walmiki
Residing at Sanjay Gandhi Vasahat
Pashan Road, Pune.
13. Kailas Daulat Thite
Residing at
Hundekari Vasti
Phursungi, Tal. Haveli,
Pune.
14. Ramdas Namdeo Pawar
Residing at
Pimple Nilakh (Sathe)
Aundh, Cant. Pune.
15. Sunil Ramchandra Sapkal
Residing at House No. 147
B.G. Wada, Aundhgaon
Pune.
16. Kantilal Maruti More
Residing at
Vittal Nagar,
Pashan, Pune.
17. Mahesh Sukhpal Balmiki
Residing at
NDA Khadakwasal
Powers Colony No.15/7
Pune.
18. Jaysingh Vitthal Hulawale
Residing at
Post Hinjewade
Tal. Mulshi Dist. Pune.
19. Sadbir Ramsharan Ginwal
Residing at NDA Road
Uttamnagar, Room No.216
Pune.
20. Sanjay Chamanlal Balmiki
Residing at India Vasahat
Ganeshkhind, Aundh Road,
Pune.
21. Mahendra Balmiki
Residing at
Old Hostel, Pashan Road,
Pune.

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22. Jagpal Giriyari Balmiki
Residing at
Samjay Gandhi Vasahat
Pashan Road, Pune.

23. Joginder Chatarsingh Balmiki,
Indira Vasahat,
Ganeshkhind, Aundh Road,
Pune - 411 007.

24. Jayvanti Harpal Balmiki,
NCL G/28, Pashan,
Pune - 411 008.

25. Ratan Babulal Balmiki,
Indira Vasahat,
Ganeshkhind, Aundh Road,
Pune - 411 007.

26. Merry S. Mani,
Nimhan Mala,
Pashan Road,
Pune - 411 021.

27. Ajay Rajaram Pawar,
Subhashnagar,
Yerwada,
Pune - 411 006.

28. Sabir Chand Shaikh,
1244, Kasba Peth,
Pune - 411 011. ... Applicant.
(By Shri A. Shivade, Advocate)

Vs.

1. (1) National Chemical Laboratory,
through the Director,
Pashan,
Pune - 411 008.

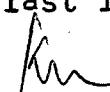
2. Union of India,
Through the Secretary,
Ministry of Scientific and
Industrial Research,
New Delhi - 110 001.

3. Council of Scientific and
Industrial Research,
Rafi Marg,
New Delhi - 110 001. ... Respondents.
(By Shri K.P. Anilkumar, Advocate)

: O R D E R :

(Per Shri Kuldip Singh, Member (J))

This is a Joint Application filed by 28 applicants,
who allege that they are working in the National Chemical
Laboratory (NCL) for the last 10 to 21 years and they


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have right to be absorbed and regularised in service of NCL, so they pray that Respondent be directed to appoint the applicants in service of NCL w.e.f. their date of initial appointment and to accord to them all the benefits of regular salary at par with similarly situated employees, e.g. Provident Fund, Leave, Gratuity etc.

2. Facts in brief as alleged are that some of the applicants were working on daily wages with the NCL. After 1989, the NCL entered into an arrangement to show the services of the applicants as if their services are being provided to NCL by some Contractor viz. Deccan Industrial Services. In 1993, the services of applicants are stated to be engaged through another Contractor viz. Essess Enterprises.

3. The applicants further allege that this system is totally sham and bogus used by the NCL to deprive the applicants their legitimate rights. It is also stated that the nature of work performed by applicants is of perennial nature since the job is of sweeping and maintaining Garden, which is supervised by NCL staff. Attendance Register is also maintained by NCL. But only after the month Contractor comes collect attendance sheet and distributes wages. PF is also deducted and NCL is contributing their share of P.F. It is also pleaded earlier some of casual workers had been regularised by NCL. So it is also stated that NCL being a model employer should absorb the applicants and regularise their services.

4. Respondents who are contesting the OA denied that applicants are employees of NCL. Respondents insist that

applicants are the employees of Contractor. Respondents also say that their length of service do not confer any right on the applicant to claim employment. It is denied that applicants are engaged for sweeping work, rather it is stated that applicants are employed by the Contractor to do miscellaneous work of NCL as per requirement of Respondent No.1.

5. It is also stated that deduction from wages towards PF is made by Contractor. Respondent admit that earlier in accordance with casual workers Absorption Scheme, 1990 and again in 1995 some casual workers were regularised after due screening as per the scheme. Even the scheme of Department of Personnel & Training dt. 10.9.1993 providing for granting temporary status was also applied, whosoever fulfilled the conditions of the schemes were given due benefit. Since the applicants are not similarly situated, they are not eligible for regularisation.

6. I have heard the Learned Counsel for the parties and have gone through the record also.

7. The Learned Counsel appearing for the applicants submitted that in a similar matter in the case of Secretary, Haryana State Electricity Board Vs. Suresh & Ors., the Hon'ble Supreme Court had lifted the veil from a contract entered into by HSEB and ~~are~~ ^{one by} Kashmir Singh who supplied Labours to HSEB and Court had come to the conclusion that employees who were working ostensibly through contractor were in reality working directly under HSEB. Hence, some analogy be applied and it should be

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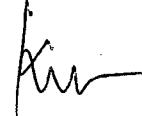
held that applicants are working for NCL.

8. On the contrary, Learned Counsel for Respondents submitted that if the applicants were to challenge the agreement, they should first get their status established in an appropriate forum as it was so held in Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and ~~Amr.~~ 2001 1 CLR 532 by the Hon'ble Supreme Court.

9. On the same time he also relied upon another judgement reported in 2001 1 CLR 754 Cipla Ltd. V/s Maharashtra General Kamagar Union and Ors.

" But One thing is clear - if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same."

Admittedly in this case the employees themselves allege that they are working under contract between respondent No.1 and ~~are~~ ~~Esse~~ Enterpreneurs. Though they say the contract is sham and bogus. But I find that this contention of the applicants has no force. Since even in the pleadings the applicant admit that at the end of month contractor comes and collects their attendance sheet, pay wages to them. Though they say that their Provident Fund is ~~also deducted, but the respondents~~ ~~counsel~~ submitted that the provident fund is being



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deposited in the account of applicant as per the code of contractor. Each of the applicant is aware that they are maintaining the contractor code for their Provident Fund account, to this there were no denial from the applicants, which means the applicants right from the day when started working under this agreement they knew it well and they never objected to it.

10. Besides that respondents have stated that they had applied two schemes for regularisation as well DOPT scheme for conferring temporary status to eligible employees. The applicant who claim to be working even at that time also did not raise any voice to be regularised. Applicant themselves admit that some casual labourers were regularised. There is no explanation as to why the applicants at that stage did not ask the respondents for regularisation.

11. As per the nature of work which is being alleged to be perennial and available with respondent throughout the year is concerned. The applicant again themselves say in OA that they are given " any type " of work. Thus it cannot be said that the work which is being performed is of perennial nature.

12. As per the judgement cited by counsel for applicant i.e. Secretary, HSEB V/s Suresh and others (Supra) is concerned I may mention that Hon'ble Supreme Court observed that in that case there was nothing to indicate if the HSEB was registered as Principal employer and the so called contractor was not a licensed contractor,

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whereas in the present case respondents categorically stated that they have license under the contract labour (Regulation and Abolition) Act to engage contract labourers. It is also stated that contractor has also got the license under the Act.

13. In the judgement cited by the counsel for the applicant, the Hon'ble Supreme Court had also referred to a previous judgement of Air India case (1997 AIR SCW 430) and stated how after abolition of contract ^{of} labour system, by necessary implication the principal employer ^{is} under statutory obligation ^{and is} ~~because~~ duty bound to absorb the labour.

14. In this case since there is no challenge to the fact that principal employer and contractor both are licensee under the contract labour (Abolition and Regulation) Act. So the appropriate remedy for the applicants is to seek the abolition of contract from appropriate forum. Unless that is done the applicants cannot seek the relief of regularisation.

15. I may further say that in this case the conditions under which veil from the contract was lifted by Hon'ble Supreme Court in case of Secretary HSEB (Supra) those conditions are conspicuously missing.

16. In case of Secretary HSEB contractors and principal employer both were not having license under the contract labour (Regulation and Abolition) Act, whereas in this case there is no challenge to the assertion of respondents to the effect that both are licensees under the said Act.

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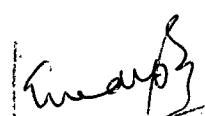
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17. In case of Secretary HSEB the work was of different nature, whereas in the present case according to applicants themselves they are given any type of work which cannot be said to be perennial in nature.

18. Further there is no challenge to the fact that Provident Fund of workers is being deposited under the code of contractors which is also a strong indication towards the contract being of a regular nature. On the contrary there is nothing to indicate that contract is sham and bogus. None of the allegation except the length of service of each employee is taken as ground to challenge the contract. But in my view length of service alone is not sufficient to hold that contract is sham and bogus.

19. As such I find no ground to interfere in this OA. The OA is dismissed.

20. No costs.


(Kuldip Singh)
Member (J)

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