

46

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 820/99

Date: 16.3.2000

Between:

M. Seshagiri Rao

.. Applicant

A N D

1. The Director General,
Telecom
New Dehi - 110 001.
2. The Chief General Manager,
Telecom, A.P. Circle,
Hyderabad 500 001.
3. The Telecom District Manager,
Khammam - 507 050.
4. The Divisional Engineer,
Telecom,
Microwave Maintenance,
Warangal - 506006.
5. The Assistant Engineer,
MW Mtce.
Khammam - 507 003.
6. The Assistant Engineer,
MW Mtce,
Warangal 506 006. .. Respondents.

Counsel for the applicant : Mr. C.Suryanarayana

Counsel for the respondents:Mr.M.C.Jacob for Mr.BN Sharma

Coram:

Hon. Shri R.Rangarajan, Member (A)

Hon. Shri B.S. Jai Parameshwar, Member (J)



O R D E R
(Per Hon. Shri B.S.Jai Parameshwar, Member(J))

Heard Mr. C.Suryanarayana, learned counsel for the applicant and Mr. M.C.Jacob for Mr. B.N.Sharma, learned standing counsel for the respondents.

2. The applicant herein was engaged as casual mazdoor by the respondent no.5 at his Kodad unit and later at Khammam Unit from 1-10-91 to 10.3.93 for 435 days. As he happened to be the junior most casual mazdoor and there was no work he was disengaged by respondent no.5 vide memo No.KHM-MW/E-5/92-93/7 dt.10.3.93(Annexure A-1). After disengagement, the applicant submits, that he was engaged by the Asstt. Engineer MW Project stationed at Vijayawada from 11-3-93 to 30-4-95(405 days).

3. The applicant submits that from 24-4-94 to 30-4-95 he was employed by a contractor viz.Alert Security Force with its headquarters at Secunderabad to perform the duties which he had performed earlier.

4. *The* Applicant was not engaged from 1-5-95 to April, 1996.

5. The applicant submits that from 1996 onwards he was employed till the end of November'98 at the Microwave Station, Kondapur(near Ghatkesar) through a new contractor viz. Sai Prabhat Agencies.(Annexure A-3). The applicant submits that he continued at same station from 1-12-98 through another contractor viz. Asian Security Force. He submits that he is continuing in the service at Kondpur. Thus he submits that he has rendered 2250 days of contract service to the department by self or through contractual agencies.

6. In the meanwhile the DOT in its letter No. 269-4/93-STN.II(Pt) dt. 12-2-99(Annexure A-4) imposed ban on employment both directly or through contracts.

7. In view of this letter of the DOT(Annexure A-4) the applicant apprehends that his services may be terminated at any time.

8. He has relied upon the decision of the Hon. Supreme Court in the case of Secretary, H.S.E.B. vs. Suresh & Ors. (1999(2)SCALE 315). Hence he has filed this OA for the following reliefs :

"to declare

(a) that since the system of employment through Contractors or Contract Agencies has been abolished by the Telecom Department and the contract of agency through which the applicant was employed in the department is being determined he becomes direct employee of the said department;

(b) that he is entitled to absorption as casual mazdoor in the department;

(c) that the 5th respondent's order Annexure A-1 viz. the memo No. KHM-MW/E-5/92-93/7 dt. 10-3-93 issued by the 5th respondent is vitiated ab initio and void;

(d) that the alleged break in applicant's service being no break, he is entitled to count the "break" period as part of his service for all purposes, though not for wages, and ;

(e) consequently to direct the respondent authorities to absorb the applicant as casual mazdoor in the department in an appropriate unit and fix his seniority accordingly w.e.f. 1-10-91 besides directing them to grant him all consequential and incidental benefits.

9. The respondents have filed a reply. They submit that the application is belated; that the applicant is not an employee under them; that this tribunal has no jurisdiction ; that the applicant was engaged from 1-10-91 to 10-3-93; that he was dis-engaged from casual service as there was no work and was paid necessary compensation amounting to Rs. 2,167.20 as per annexure R-1; that the averments that the applicant was thereafter engaged by the DE MW Projects Division, Vijayawada is not correct; that the same is supported by Annexure R-2; that the applicant might have been engaged by the contractor M/s. Alert Security Force for the period ^{from} 24-4-94 to

2

30-4-95 at Khammam and by M/s. Sai Prabhat Agencies for the period from May,1996 to November,1998 at Kondapur MW station and from 1-12-98 he might have been engaged by another contractor viz. M/s. Asian Security Force. They submit that after disengagement of the applicant from 10-3-93 he was not engaged by the department. They submit that the decision of the Hon.Supreme Court relied upon by the applicant is not applicable to the facts and circumstances of the case. They also refer to the letter dt.12-2-99 and relied upon the observations made by this Tribunal in OA 382/97 decided on 26-12-99(Annexure R-5). They further submit that the services rendered by the applicant through contractors cannot be considered as the services rendered by him through the department as his earlier casual mazdoor service was terminated long back in 1993 the question of regularising him or absorbing him does not arise.

10. Thus they pray for the dismissal of the OA.

11. The applicant has not filed any rejoinder to the reply.

12. The facts are not in dispute. The respondents admit engagement of the applicant as casual mazdoor by respondent no.5 from 1-10-91 to 10-3-93. Though the applicant submitted that thereafter he was engaged by Asstt.Engineer MW station Vijayawada from 11-3-93 to 30-4-95 the said fact has been disputed by the respondents and in support of their dispute relied upon the letter dt.29-6-99 of the Divisional Engineer,Telecom, MW Maintenance Vijayawada.

13. The respondents submit that the applicant might have been engaged by the contractual agencies for rendering service to the department. Further they do not categorically state the contractual agencies were not engaged for performing the duties in the department. They, anyway, indirectly admit that these agencies were

2

entrusted with certain works of the department that these agencies might have engaged the applicant for discharging their contractual obligations to the department.

14. The applicant is rendering services through a contractor. In view of Annexure 4 dt. 12-2-99 he apprehends termination of services of his contractor. Entrustment of certain works of temporary or perennial nature by a department to a contractor is governed by the Contract Labour (R&A) Act, 1970. Section 10 of the Act 1970 envisages prohibition of employment of contract labour. Such prohibitions of contract labour under section 10 of the Act means a complete ban on employment of contract labour in any establishment irrespective of the fact whether the Act 1970 applies to the establishment or not as per Section 1(4) of the Act or its proviso.

15. In Andhra Pradesh Dairy Development Co-operative Federation vs. U. Ramulu (reported in 1989(1)ALT 288) the Hon. High Court after considering the scope of some provisions of the Act held that neither the Act nor the rules provide that upon the abolition of the Contract labour the said labourers should be directly absorbed by the principal employer nor is there any provisions that pending decisions upon an application under section 10 of the Act ^{by} workers, the said worker should continue to be engaged by such principal employer. Therefore it cannot be contended that the contract labour should continue to be engaged by any such principal employer.

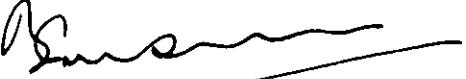
16. Further, the Hon. Kerala High Court in the case of P. Karunakaran v. Chief Commercial Supdt. Southern Railway (1988 Lab I.C. 1346) held on such abolition persons who get displaced do not get statutory right for absorption in regular service under the employer.

2

17. However, we make it clear that before abolition of contract labour, the respondent department may take into consideration clauses (a)(b)(c) & (d) of Sec.10(2) of the Act.

18. With these observations, the OA is disposed of.

No order as to costs.


(B.S. JAI PARAMESHWAR)

Member (J)

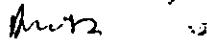
16.3.80

MD



(R. RANGARAJAN)

Member (A)


MD

16.3.80

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,
HYDERABAD.

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

COPY TO

1. HONMJ THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

2. HONR. (ADMN) MEMBER. THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

3. HONJP. M. (JUDL) THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

4. D.R. (ADMN)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL DATE OF ORDER 16/3/00

MA/RA/CP.NO

IN

G.A. NO. 820/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

24 MAR 2000

हైదరాబాద్ స్వాయంపీట
HYDERABAD BENCH