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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1212 of 1999

DATE OF JUDGMENT: 26 NOVEMBER, 1999

BETWEEN:

1. T.Ramanjaneyulu,
2. Gowrappa,
3. R.Hussainaiah,
4. B.Bala Maddajah,
5. D.Udaya Sankar,
6. P.Gopal,
7. S.Zeelan,
8. Shaik Sadak Jaffar Vali,
9. Boya Govindu,
10. C.Ramudu,
11. M.Laleppa,
12. Mohammed Abdulla,
13. B.Chinna Maddilety,
14. Md.Ishaque,
15. Md.Ibrahim.

.. APPLICANTS

AND

1. Union of India rep. by its Chairman,
Railway Board, New Delhi,
2. The General Manager,
South Central Railway,
Secunderabad,
3. The Divisional Railway Manager,
S.C.Railway,
Guntakal.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: G.S.RAO

COUNSEL FOR THE RESPONDENTS: Mr.JR GOPALA RAO, Addl.CGSC

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SRI RANGARAJAN, MEMBER (ADMN.))

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Heard Mr.G.S.Rao, learned counsel for the applicants and Ms.Shakti for Mr.J.R.Gopala Rao, learned standing counsel for the respondents.

2. There are 15 applicants in this OA. It is admitted by them that they are contract labourers who worked under M/s Mahanti Srinivasa Khadhi and Village Industries Association, Guntakal registered under Licence bearing No.46/90, dated 20.9.90 issued by the Assistant Labour Commissioner (C), Hyderabad by his letter dated 7.8.92 which is enclosed as Annexure A-1 to the OA. The applicants worked as Contract Labourers in Guntakal Loco Shed of South Central Railway, Guntakal Division for loading and unloading of coal ashes for a period of 3 to 4 years. Consequent on termination of the said contract due to moderation of the Railway working, they were discharged. The particulars of the applicants are given in the Annexures enclosed to the OA indicating educational qualifications, service etc. issued by the Association. The applicants have also filed a chart showing various details such as nature of work performed, date of entry as contract labourer, date of birth, educational qualifications etc. as Annexures A3/1 and A3/2.

3. The applicants submit that the Railway is the principal employer and hence they are bound to appoint them as Railway employees on abolition of the contract labour as per the provisions of the Contract Labour (R&A) Act, 1970. For this, they rely on the judgement of the Apex Court reported in 1998 SCC (L&S) 1358 (Union of India v. Subir Mukharji) [Annexure A2/1 to the rejoinder], (1999) 3 SCC 601 (Secretary, HSEB v. Suresh) [Annexure A-3 to the rejoinder] and 1997 SCC (L&S) 1344 (Air India Statutory

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Corporation v. United Labour Union) [Annexure A-4 to the rejoinder].

4. This OA is filed praying for a direction to R-3 to

(i) formulate a scheme to absorb the applicants in Group-D category;

(ii) to enter the applicants' names as casual labourers in the live register for reengaging them as and when casual labourers required by the Railway administration; and

(iii) to regularise the services of the applicants in Group-D category as per the rules in force and accord consequential benefits from the date they completed 120 days of continuous service.

5. A reply has been filed in this OA. In the reply, it is stated that it is an admitted fact by the applicants themselves that they were engaged by a private contractor i.e., Mahanthy Sreenivas Khadi & Village Industries Association, Guntakal. They were not engaged by the Railway administration. Hence no employer-employee relationship exists^① between the applicants and the Railway administration at any time. If at all they have any grievance, they have to appear before the Industrial Tribunal and not the Administrative Tribunal.

6. The applicants were engaged by a contractor during the years 1990-92 and they have approached this





Tribunal after a lapse of 7 years. Hence the abnormal delay cannot be condoned and on that count, the OA has to be dismissed. There is no work for loading and unloading of the coal as steam loco sheds have been withdrawn due to the introduction of the Diesel and ~~Electric~~ Locomotives in Guntakal Division.

7. It is an admitted fact that the applicants were engaged by a contractor and they were never engaged by the Railway administration. Hence no employer-employee relationship existed between the Railway administration and the applicants herein to engage them even as Casual Railway workers. There are number candidates engaged by the contractor to perform various duties assigned to them by the Railways. If all such contract laborers are to be absorbed in the Railways even on casual basis, it will lead to a situation where the Railways will be over staffed. That is not the intention of the Contract Labour Act. Only if a direct contract has been entered into between the applicants and the Railway administration for performing perennial nature of work, then only those candidates can be considered for regular absorption in Railways either by forming a scheme or otherwise. The applicants herein were never engaged by the Railways for performing any perennial nature of work. They were engaged by a contractor for loading and unloading of coal received during the period when the steam locomotives were in use. There are no steam locomotives in the Gunakal Division of the Railways and hence there is no work of loading and unloading of coal. Hence the applicants cannot contend that they were performing the perennial nature of work. Further, the

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applicants were discharging duties way back in 1992. They have filed representations to R-2 only on 15.9.98 as seen from para 3 of the rejoinder filed by the applicants. It is not known why they waited for over 6 to 7 years before approaching this Tribunal. The only reason given by them was that they were repeatedly filing representations to the authorities concerned. Such repeated representations will not extend the period of limitation.

8. The applicants cannot be engaged now for loading and unloading of coal as there are no steam engines in use. Further, if they are allowed to be engaged in the other Departments, then the casual labourers in that department will protest. Hence they cannot be considered for absorption in any other departments. The work done by them earlier under a contractor having been concluded, it cannot be said that they were still performing the perennial nature of work entrusted to them. Hence the prayer of the applicants in this OA cannot be conceded.

9. The reported case in 1998 SCC (L&S) 1358 (Union of India v. Subir Mukharji) clearly indicates to absorb the petitioners therein as regular Gorup-D employees or such of them who may be required to do the quantum of work which may be available on a perennial basis, if they are otherwise found fit. Such a situation does not exist in this case. Hence the reported case does not come to the rescue of the applicants.

10. In the reported case in (1999) 3 SCC 601 (Secretary, HSEB v. Suresh), it is held that it is for the

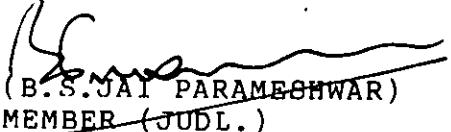
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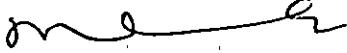
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courts to lift the veil to determine the nature of relationship between the contract labourers and the administration i.e, whether employer-employees relationship existed between them. In the present case, it cannot be said that such relationship existed as the applicants were all contract labourers working under a contractor and were paid by that contractor. In no time, the respondents have entered into a direct contract with the applicants herein. Hence this reported case also is of no consequence to the applicants herein.

11. The reported case in 1997 SCC (L&S) 1344 (Air India Statutory Corporation v. United Labour Union) cannot be a relevant case in this connection as the facts of that case are different.

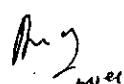
12. In view of what is stated above, we find no merit in this OA. Hence the OA is dismissed. No order as to costs.


B.S.JAI PARAMESHWAR
MEMBER (JUDL.)


(R.RANGARAJAN)
MEMBER (ADMN.)

26.11.99

DATED: 26th NOVEMBER, 1999


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