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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABADBENCH

O.A. 1243/99

Date: 14.6.2000

MA 150/2000 &
MA 435/2000

Between:

1. Kommala Prasanna Kumar
 2. Kuppampatti Nagaraju
 3. Kurapati Rajendra Prasad
 4. Vatambeti Venkataiah
 5. Rayapa Sudhakara Babu
 6. Thonda Chellaiah
 7. Kodamala Vijayakumar
 8. Kodamala Raju
 9. Kailas Nagaraju
 10. Vootla Ravichandra Sukumar
 11. Damarla Suresh
 12. Kanam Bakam Thirupal
- .. Applicants

A N D

1. The Engineer-in-charge,
Superintending Engineer
Scientist-E, Electrical Maintenance
SHAR Centre, Sriharikota, Nellore
Dist. A.P.
 2. Head,
Engineering Maintenance Division,
Administrative Buildings, SHAR Centre,
Sriharikota, Nellore Dist. A.P.
 3. Controller,
Administrative Buildings, SHAR Centre,
Sriharikota, Nellore District., AP
 4. Director SHAR Centre, Administrative Buildings,
of "SHAR" Centre, Sriharikota,
Nellore Dist. A.P.
 5. Union of India,
Secretary,
Indian Space Research Organisation,
New Delhi.
- .. Respondents

Counsel for the applicants: Mr. N. Krishna Murthy

Counsel for the respondents: Mr. B.N. Sharma

Coram:

Hon. Shri R. Rangarajan, Member (A)

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

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Date:

O R D E R

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

Heard Mr. N. Krishna Murthy, learned counsel for the applicant and Mr. B.N.Sharma, learned standing counsel for the respondents.

2. The 12 applicants herein have filed this application praying ^{for a} direction to the respondents to regularise their services as Senior Electrician, Electrician, and Helper in the respondent organisation viz. SHAR Centre at Shriharikota in Nellore Dist. (in short "the Centre") after calling for the records.

3. The facts as narrated by the applicants are as follows:

The Centre has constructed residential quarters for its personnel at Suvarnamukhinagar, Pinakininagar and Pulikotnagar in Sulluripet. Till 1986 the Centre through its own personnel maintained the quarters attending to the sanitation, sweeping, gardening, carpentary work, pump operating work and electrical works. It is stated that in the year 1987 these works were entrusted to the contractor. The applicants submit that they were attending to the maintenance

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of electrical installation and appliances provided to these quarters. They submit they have received wages at the rates indicated in para 4(e) page-6 of the application. They submit that they were working on shift basis. ^{1st}first shift commenced from 6.00AM to 2.00 PM, second shift commenced from 2.00PM to 10.00PM and General shift commenced from 9.00AM to 5.00PM. The applicants had no facilities like weekly off, PF, ESI etc. They submit that the work they are performing through the contractor is of perennial nature and not of a seasoned one. They submit that even though they were attending to the electrical works through a contractor the regular staff of the Centre used to supervise their work, attendance and performance. Thus they submit that a contractor was only an intermediary and in fact for all purposes they were working for and on behalf of the centre. They submit that the Centre could have appointed them directly instead of engaging for the works through a contractor. The applicants have been working at the Centre for the period ranging from 10 years to 2 years.

4. They rely on the decision of the Hon. Supreme Court in the case of Secretary, HSEB v. Suresh (AIR 1999 SC 1160) and another decision of the Hon. Supreme Court in the case of Hussainbhai v. Alath Factory Tozhilali Union & Ors, (AIR 1978 SC 1410)

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and ~~(on the order)~~ common order of this Tribunal in OAs 1485/96 & OA 370/97 decided on 9-12-98.

5. The respondents have filed their reply. They state that the applicants are all working under the contractor by name M/s. Sivaiah Naidu, Electrical Works, Engineers & Contractors, Bapuji Colony, Sullurpeta. The said firm was granted contract for a period of two years for maintenance of electrical installation of their quarters. The Centre has not appointed any of them and they have not received their wages from the centre. All the residential colonies were being maintained by the Engineering Maintenance Department (EMD) of the Centre. As the activities of the Centre were expanding year by year and in view of the augmentation of SPROB facilities the Centre decided to contract out some of their operation and maintenance activities of the department which ^{were} not critical on the security and safety point of view. In the process, the Director of the Centre constituted a committee to study the EMD manpower deployment ~~in~~ in Keepakam and housing colonies vide his order dt. 23-12-1988. The committee submitted its report during March, 1989. The committee in its report recommended for contracting out electrical maintenance job of the housing colonies of the Centre at Sullurpeta. Based on the recommendation of the committee the contract for maintenance of electrical installation for a period of

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one year was awarded to M/s. Jayalakshmi Electrical Works on 24-1-1990 and the contractor commenced the work during February, 1990. The electrical maintenance was being carried out on contract basis since 1990 and not from 1987 as averred by the applicants. Five applicants have been serving for a period of 2 years, two applicants for more than one year, two applicants have been serving for only three years and one applicant for a period of 6 years, one applicant for a period of 9 years and only one applicant had worked with the Centre for 10 years. It goes to show that the 7 applicants had joined the present contractor M/s. Sivaiah Naidu Electric Works who was awarded the work on 29-7-1997. Thus they submit that every contractor entrusted the work to the same labourers. However, they dispute the continuity of the working of the applicants under the different contractors. They state that the identity cards were provided to the labourers engaged by the contractor for the purpose of safety to the tenements of the quarters and to avoid unauthorised entry of the people into the residential quarters. They submit normally the contract was awarded for a period of one year and it is only in the present case the contract was entrusted to M/s. Sivaiah Naidu for a period of two years. They submit that whenever there was a change in the contractor there is a change in the labourers. Thus the respondents

admit that the applicants were working under a contractor. They also deny to have paid any wages to them by the Centre. The wage bills are being maintained by the Contractor. They are not maintaining the attendance register of the labourers engaged by the contractor. They deny that the contractors are only an intermediary. They submit that the applicant at Sr.No.11 (Annexure A1) is not in the service of the contractor and has joined some other company. They do not admit that the applicants at Sr.No.1, 2, 3 and 6 have been working continuously through different contractors. They submit that they are not aware of this fact and cannot be confirmed as no documents were produced by the applicants. They deny that the work carried out by the applicants are perennial in nature. They offer no comments on the averments of the applicants that they have worked continuously for more than 240 days in a year under the contractor.

6. They submit that the total number of labourers engaged by the contractor is only 12, being less than 20, the Contract Labour (R&A) Act, 1970 is not applicable to the case. The averment that the contractor had no licence under the said act is irrelevant. They submit that the contract was not for supply of labour but for the maintenance of electrical installation

and operation of diesel generator set, pumps etc. and hence the Centre is exempted from the application of various provisions of Industrial Dispute Act vide Ministry of Labour O.M. No.L42011(14)/80-D-II.N. dt. 1-1-1981. The fact that the applicants possessed the requisite qualification for performing the electrical maintenance and other allied duties is not relevant as they are all working under the contractor. Presently M/s. Sivaiah Naidd is the contractor for the above mentioned contract hence the workers employed by the said contractor cannot have any claim/entitlement to be absorbed in the respondent organisation. The applicants have no legal claims to regularise their services in the Centre and hence the OA is liable to be dismissed.

7. On 4-2-2000 the applicants filed MA 150/2000 seeking a direction to the respondent No.1 to produce the attendance register maintained by the Centre for the period from June to July 1994 and January 1995 to July, 1999.

8. The respondents resisted the said MA stating that no attendance register was maintained by the respondents for the labourers of the contractor as they ^{were} not the employees of the respondent's organisation. The copies of the attendance register said to have been maintained by the SHAR centre and produced by the applicants are not authentic.

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Thus they denied to have maintained itself any attendance register for the labourers of the contractor.

9. Thereafter the applicants filed MA 435/2000 along with material papers and in the affidavit they clearly stated that the Centre had maintained attendance register for them, that their performance of the duties was checked by the regular employees of the Centre, that the regular employees viz. S. Thotadri, Senior Technician-B (Code No. S-11314-6), N.V. Ratnam, Senior Technician-B (Employee Code No.Q-11327-6), M.Subramanyam, Engineer (Scientist-D) were incharge of their works, that there did exist ^{the} attendance register. Further the Centre had maintained complaint register in the Engineering Maintenance Department and in the said register the applicants have put in their initials. Thus they have produced the identity card issued by the centre to the applicants. The attendance register for the month of February '93, December '93 and January '96. Further they have produced the daily log sheet for generators dt. 15-6-92 and 14-4-93. Thus they submit that it was not reasonable for the Centre to deny to have maintained the register for the labourers engaged by the contractor.

10. In the rejoinder filed by the applicants they have submitted that the residential quarters of the

Centre are located outside the security zone. The Electrical Maintenance work was being carried out by them through a contractor under ^{the} supervision of the regular employee of the centre. It is not their case that ~~the facilities were extended~~ facility to the inmates of the colony through the applicants. They ~~provided~~ ~~the~~ ~~same~~ facilities by awarding the contract for the fresh term to the intending contractors. The work performed by them is perennial in nature. The work will be there so long as the residential colonies are provided to the regular employees of the centre. Thus they submit that there are about 100 labourers working under the contractor ~~within~~ within the ~~same~~ security zone or outside the security zone, that they are performing the duties relating to electrical maintenance of the residential colonies situated outside the security zone at Sullurpeta. The respondent organisation cannot say that the provisions of contract Act, 1970 is not applicable to them. They submit that the applicant No.11 is not in employment under the contractor. They submit that the available copies of the attendance register and other relevant documents produced clearly substantiate their claims; that even though they were working under the contractor their work was supervised by a regular employee of the Centre.

11. From the materials available on record and from the documents produced by the respondents it can be seen that the applicants 1 to 10 and 12 are working under a contractor. Their work relates to electrical maintenance of the residential quarters owned by the Centre. The fact that the Centre has provided quarters to its personnel in the locations mentioned in the applicant^{tion} is not disputed by the respondents. The respondents in a way admit to have entrusted certain works of electrical maintenance of the quarters to a contractor from 1990. They deny that the applicants are working under them. They deny to have maintained the attendance register in respect of the labourers engaged by a contractor. They admit to have issued identity cards to the labourers engaged by the contractors on the ground of safety and to prevent unauthorised entry of persons into the residential quarters. They also deny to have paid any wages directly to the applicant.

12. Considering the additional affidavit filed by the applicant^s along with material documents produced by them we feel that the respondents had maintained the attendance register of the labourers engaged by the contractor and in fact they had maintained, Other documents like complaint register and log register for generators indicate the performance of the work by the applicants in the

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electrical maintenance department.

13. The respondents also submit that the applicants have been working under the different contractors for certain periods. The respondents in their counter have clearly stated that they were getting done the electrical maintenance work through the contractor. Most of the applicants have worked under the present contractor M/s. Sivaiah Naidu.

14. Though the work of the applicants were supervised by a regular employee of the Centre that does not mean that the applicants became the employees of the centre. Their initial engagement by a contractor cannot be modified or changed merely because their work was supervised by a regular employee of the centre. Mere supervising by a regular employee of the centre does not change the status of the applicants.

15. The decision of the Hon. Supreme Court in the case of HSEB vs. Suresh relates to contract labourers. They have clearly stated that the way how to regularise the contract labourers when the ^{System} Contract Labour Act, 1970 is abolished. The Contract labour system is abolished as contemplated under section 10(1) of the Act then the Section 10(2) of the Act comes into play.

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16. The other contention raised by the Centre is that the contract labourers are only 12 being less than 20 the provisions of the Contract Labour (R&A) Act is not applicable. This fact is denied by the applicants in their rejoinder saying that in these residential colonies the works relating to electrical maintenance and also civil maintenance are being given to the contractors and as such there are about 100 contract workers working at the colonies.

17. As the applicants are working under a contractor they cannot claim regularisation or absorption in the Centre. However, we make it clear that once the contract labour system is abolished then the provisions of Section 10(2) of the Act shall be strictly followed.

18. The learned counsel for the applicants relied upon the impugned order dt. 9-12-1998 in OA 1485/96 & OA 370/97 and submitted that at least a direction be issued to the respondents to frame a scheme for regularisation of the applicants and other contract labourers. However, the respondents submitted that the department in the case had approached the Hon. High Court of AP in WP No. 15364/99 and 15491/99 and batch and in that writ petitions the Hon. High Court of AP has set aside the direction. In that view of the matter we feel it may not be proper to issue direction similar to those in OA 1485/96.

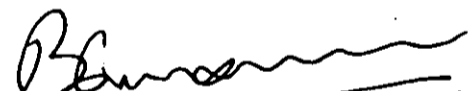
19. In case the contract labour system is abolished the respondents shall adhere to the provisions of Section 10(2) of the contract Labour (R&A) Act, 1970. With this observation the OA is disposed of.

20. The Centre shall follow the directions of the Hon. High Court in WP 15364/99 and batch in this case also.

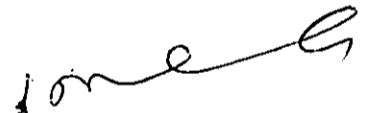
21. With the above observations the OA is disposed of. No costs.

22. Since the OA is disposed of no further orders are necessary in the MAS.

23. Accordingly MAS stand disposed of.


 (B.S. JAI PARAMESHWAR)
 Member (J)
 14.6.2000

MD


 (R. RANGARAJAN)
 Member (A)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

COPY TO:

1. HDHWJ
2. HORN (ADMN) MEMBER
3. HOSJP (JUDL) MEMBER
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1ST AND 2ND COURT

TYPED BY
COMPADED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE O.H. NASIR
VICE CHAIRMAN

THE HON'BLE MR. R. RANGAPADAN
MEMBER (ADMN.)

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

DATE OF ORDER

14/6/00

MA/RA/CP.NO.

IN

CA.NO. 1243/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

~~CA~~ ~~MA~~
DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AND WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

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