

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.24/2001

Date of order: 26/2/2002

Vinod Kumar Sharma, S/o Sh.Vishnu Saran Sharma, R/o
Behind Head Post Office, Bharatpur.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt.of Agriculture, New Delhi.
2. Director, National Research Centre, On Rapeseed Mustard Sewar, Bharatpur.
3. Indian Council of Agriculture Research through its Chairman, Pusa Building, New Delhi.
4. Bharatpur, Dholpur Purva Sainik Kalyan Samiti, C/o Jila Sainik Kalyan Karyalaya through its Secretary, Bharatpur.

...Respondents.

Mr.K.P.Singh : Counsel for applicant
Mr.V.S.Gurjar : Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

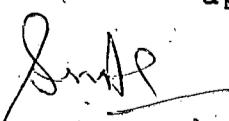
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer (i) to quash the verbal order of termination of the services of the applicant and to direct the respondents to take back the applicant forthwith in service and (ii) to direct the respondents to regularise the services of the applicant as permanent employee, fixing him in regular scale of pay as admissible to other similarly situated employees.

2. In brief facts of the case as stated by the applicant are that he was engaged as Agricultural labour on.



12.1.94 by respondent No.4 but he worked under the control and supervision of respondent No.2 and the nature of work allotted to him was of perennial nature. All of a sudden the services of the applicant were dispensed with by the respondents' department w.e.f. 20.6.99 when he pressurised respondent No.2 to make him regular and to fix in a regular scale of pay and to grant him the status of permanent employee. It is stated that although no order of appointment was given to the applicant either by respondent No.4 or by respondent No.2 but employer - employee relations were created between the applicant and the principal employer and the principal employer had the power to alter the terms and conditions of contract and also to terminate/dissmiss the applicant from service, when ever it is found necessary. It is further stated that dispensing with the services of the applicant is arbitrary and in violation of Article 14 & 16 of the Constitution. It is stated that after dispensing with the services of the applicant, respondent No.2 recruited the persons named in para 5(D) & 5(E) of the O.A, therefore, the action of the respondents dispensing with the services of the applicant and not regularising him is not only discriminatory but also in violation of the provisions of the Constitution of India. Therefore, the applicant filed this O.A. for the relief as above.

3. Reply was filed. It is stated that the applicant was engaged by Contractor, respondent No.4, therefore, mere working on contract basis through a contractor, does not confer any right in favour of the applicant to insist for regularisation. The applicant is not entitled to the status of a permanent employee without undergoing the process of appointment, in accordance with the relevant rules. It is



also stated that no relation of employer and employee could be established between the applicant and the principal employer and work offered to the applicant was not at all perennial nature. Therefore, the action of the respondents was neither illegal nor in violation of the provisions of the Constitution. Hence, the applicant has no case for regularisation and granting permanent status.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant urged that although the applicant was engaged by the Contractor, but he has worked under the direct supervision and control of the principal employer and the work assigned to him was of perennial nature and the contract was only a camouflage to finish the rights for regularisation and the action of respondent No.2 in dispensing with the services of the applicant is arbitrary and illegal. In support of his contentions, he has referred to (i) (1997) 9 SCC 377, Air India Statutory Corp & Ors Vs. United Labour Union & Ors, (ii) (1997) 10 SCC 754, International Airports Authority Employees Union & Anr. Vs. Airport Authority of India & Ors, (iii) (1998) 5 SCC 301 Union of India & Ors Vs. Subir Mukharji & Ors, (iv) (1999) 6 SCC 439, Indian Petrochemicals Corp Ltd. & Anr Vs. Shramik Sena & Ors, (v) (2000) 7 SCC 330, R.K.Panda & Ors. Vs. Steel Authority of India & Ors.

6. On the other hand, the learned counsel for the respondents has objected the arguments of the counsel for the applicant and emphasised that the applicant having been engaged through the contractor, therefore, there was no relation of employer and employee between the parties. He further stated that no notification under Sec.10 of the

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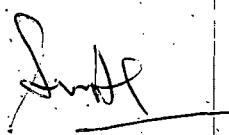
Contract Labour (Abolition & Regulation) Act, 1970 was in force at that time and the work assigned to the applicant was not of perennial nature, therefore, the applicant has no case.

7. I have given anxious consideration to the rival contentions of both the parties and also perused the whole record, including the legal citations referred by the counsel for the applicant.

8. Admittedly, the applicant was engaged by the Contractor. A principal employer normally appoints a contractor who in turn appoints the labour. No relation of employer and employee in law exist between the principal employer and contract labour. The contract labour was not prohibited as no notification was issued under Sec.10(1) of the Contract Labour (Abolition & Regulation) Act, 1970.

9. Section 10 CLRA Act reads as under:

"10. Prohibition of employment of contract labour
(1) Notwithstanding anything contained in this Act, the appropriate Govt may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. (2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Govt shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-
(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade,



business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of wholetime workmen.

Explanation - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate government thereon shall be final."

10. On a perusal of the provisions given under Sec.10(1) of CLRA, the following consequences follow on issuing of a notification under Sec.10(1) of the Act:

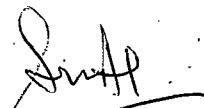
- (i) contract labour working in the establishment concerned at the time of issue of notification will cease to function;
- (ii) the contract of principal employer with the contractor in regard to the contract labour comes to an end.
- (iii) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter.
- (iv) the contract labour is not rendered unemployed but continues in the employment of the contractor as the notification does not sever the relationship of

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master and servant between the contractor and the contract labour.

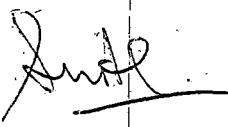
- (v) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification under Sec.10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it will be available;
- (vi) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act.

11. In Steel Authority of India Vs. National Union Waterfront Workers, 2001 (5) Scale 636, in which the cases referred by the applicant have also been considered and held that history of exploitation of labour as old as history of civilization. The Apex Court further held that in the case of abolition of contract labour upon issuance of notification under Sec.10(1) of CLRA Act 1970, the regularisation is not automatic. If upon issuance of notification for abolition of contract labour Sec.10(1) of the Act of 1970 when industrial disputes is raised by the contract labour and Industrial Tribunal found that the contractor has been interposed as a mere ruse/camouflage to evade the compliance of various beneficial legislations so as to deprive the workers of the benefits thereunder, under these circumstances the contract labour will have to be treated as employee of the principal employer and he be directed to regularise the contract labour if they are otherwise found suitable by relaxing the condition as to maximum age and academic qualification other than technical qualification.



13. Delhi High Court in a recent judgment in IGM Engineering Workers Union & Ors. Vs. UOI & Ors, 2001(3) SLJ 15 decided on 29.9.2000, summarised the law in respect of contract labour on the basis of decisions given by the Apex Court and other Courts of the country as under:

1. The Act allows and recognises contract labour and framers of the Act never purported to abolish in its entirety.
2. It is for the appropriate Govt to decide under Sec.10 of the Act whether to abolish contract labour in any process, operation or other work in any establishment. For this procedure is prescribed under Sec.10(2) of the Act as per which 'appropriate Govt.' has not only to consult the Board but also take into consideration factors mentioned in Sec.10(2), which include the consideration as to whether the work being performed by the workers in such establishment is of perennial nature or not. In various judgments Supreme Court has held that this is a function which is to be essentially performed by appropriate Govt and not by the High Court under Article 226 of the Constitution of India or Supreme Court under Article 32 of the Constitution of India.
3. If notification under Sec.10(2) is issued by the appropriate Govt then the said establishment in that process, operation or work to which such notification relates, the said establishment cannot engage contract labour. Further existing contract labour would become direct employees of



the Principal employer.

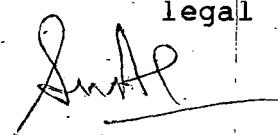
4. In the absence of such notification, there is no right which flows from the provisions of the Act for the contract labourers to be absorbed or become the employees of Principal employer and therefore, such contract labourers cannot approach High Court under Article 226 or Supreme Court under Article 32 or Article 136 of the Constitution of India for claiming regularisation.
5. However, if in a particular case the contract workers claim that the contract system in the particular process, operation, or other work in an establishment is of perennial nature and notwithstanding the fact that ingredients of Sec. 10(2) of the Contract Labour (Regularisation & Abolition) Act are satisfied the practice of contract labour is continued, then they can approach the appropriate Govt under the Act for issuing necessary notification under Sec.10(2) of the CLRA Act.
6. In case the contract workers claim that a particular contract in any process, operation or other work in the establishment is sham, and they have become direct employees of the principal employer then the remedy is to raise industrial disputes.

Whether such contract labourers have become the employees of Principal employer in course of time and whether the engagement and employment of labourers through contract is a mere camouflage and a smoke screen is a question of fact and has to be

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established by the contract labourers on the basis of requisite material. If in a given case contract labourers contend that the work is of perennial nature and the contractor is a mere camouflage, the appropriate remedy for them is to raise industrial dispute and seek reference to labour Court/Industrial Tribunal under the Industrial Disputes Act, which are the competent fora to adjudicate such dispute on the basis of oral and documentary evidence produced before them.

13. In the instant case, undisputedly, the applicant was engaged by the contractor. The contractor was receiving monthly payment from the principal employer on submission of bill and then the contractor made payment to the contract labour. No relation of employer and employee could be established in between the parties by any evidence. No industrial disputes appear to have been raised as indicated in R.K.Panda Vs. Steel Authority of India, as reported in 2000(7) SCC 330. No notification appears to have been issued for abolition of Contract Labour, under Sec.10(1) of the CLRA Act, 1970. The applicant failed to establish the fact that the work assigned to him was of perennial nature. It also appears that Indian Council of Agriculture Research was having its own recruitment rules and selections are being done after following the regular process of selection under the relevant rules. Therefore, on the basis of settled legal position and facts presented before this Tribunal, I am of the considered opinion that the applicant failed to establish any case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed. The legal citations as referred by the learned counsel for the



applicant do not help the applicant in any way.

14. I, therefore, dismiss this O.A having no merits with no order as to costs.



(S.K. Agarwal)

Member (J).