

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Review Application No. 021/022/2018
in
Original Application No.335 of 2018**

Order of Order: 07.01.2019

Between:

P. Penchallaiah, Aged about 37 years,
S/o. P. Penchallaiah, MTS (out sourcing),
o/O. The Welfare & Cess Commissioner,
Labour Welfare Organization,
Ministry of Labour & Employment,
Kendriya Sadan, Hyderabad – 500 095.

...Applicant

And

1. Union of India,
Rep. by its Secretary to the Govt. of India,
Ministry of Labour & Employment,
Shram Sakthi Bhawan, Rafi Marg, New Delhi – 110 001.
2. The Welfare & Cess Commissioner,
Labour Welfare Organization,
Govt. of India, Ministry of Labour & Employment,
Kendriya Sadan, Koti, Hyderabad – 500 095.
3. V. Rajesh, aged about 32 years,
S/o. V. Kanaka Raju,
Manpower Supplier, H. No.3-61/3/61,
Nethaji Colony, Gulmohar Park Colony,
Serlingampally, Hyderabad – 500019.

...Respondents

Counsel for the Applicant ... Mr.T. Koteswara Rao
Counsel for the Respondents ... Mrs.K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER (In circulation)
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. This Review Application has been filed seeking review of the order dated 6.12.2018 in OA No. 335 of 2018, which stood dismissed on merit. The operative portion of the said order, reads as under:-

“In the present case too, the applicant does not hold any civil post and thus his case does not come within the purview of the Administrative Tribunal. Moreover, the engagement of outsourced labour is a policy issue of the respondent organisation and the Tribunal cannot interject in policy issue, as per the observation of the Honourable Supreme Court in P.U Joshi v Accountant General, Ahmedabad reported in AIR 2003 SC 2156. The learned counsel for the applicant has submitted the judgment of the Honourable High Court of judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in W.P 40217 of 2018 wherein the prayer was exclusively in regard to recruitment of the petitioners in the writ petition filed. That case in view of the specific prayer relating to the claim for employment under the Government Service for which Recruitment Regulations were sought to be framed and without impleading the contractor, is disparate and thus distinguishable on the facts and circumstances of the case in hand. In the present case, the contractor has been impleaded and further the subject matter is implementation of a term of the bilateral contract between the respondent and the contractor, a factor which does not fall within the jurisdiction of this Tribunal. The forum for the claim of the applicant lies elsewhere.

7. Thus based on facts, provisions of the Administrative Tribunal Act and the observations of the Honourable Supreme Court the present case does not come within the ambit of the Administrative Tribunal to adjudicate.”

3. As no hearing is considered necessary, the Review Application is being disposed under circulation as per Rule 17(3) of the C.A.T. (Procedure) Rules, 1987.

4. The grievance of the applicant is for higher wages. The grievance hinges on the main dispute in the OA. The dispute is as to whether the applicant was engaged directly by the respondents or his services were supplied by a labour contractor. In the Review application the following points have been raised.

- i. The respondents have recruited the manpower in the guise of outsourcing by specifying educational qualifications, experience, wages, tenure of employment with respect to the manpower supplied.
- ii. The respondents have exercised the power of transfer of the outsourcing staff.

iii. The 2nd respondent is the defacto employer and that the 3rd respondent is only camouflage in the form of a fraudulent contract.

iv. The respondents have extended the contract period thus forcing the applicant to stay on without seeking alternate appointments in the open market.

v. It is not the case of the Respondents that the dispensaries are covered either under the Industrial Act 1947 or Contract Labour (Regulation and Abolition) Act 1970 and thus not applicable to the present case.

The case is covered under Articles 14, 16 & 21 of the Constitution as the matter of right to livelihood in Public employment is involved.

vi. The 3rd respondent i.e. Welfare Commissioner has reprimanded the Head Clerk cum Accountant for failing to follow his instructions with reference to the termination of the contract of the outsourcing staff. The bogey of rules was raised by the Head Clerk and that the details of the same were not furnished along with the OA as it was not made available at that time to the applicant under RTI Act.

vii. Though it is not specifically mentioned in the AT Act 1985 the Tribunal has to act as a court of record by taking the oral arguments since it is supplementing the functions of the Honourable High court.

5A. The records submitted by the applicant along with the Review application have been gone into in detail. This Tribunal while delving on the issue, has made it clear citing Honourable Supreme Court Judgments that the applicant's grievance does not come under the jurisdiction of the Tribunal. The submissions

of the applicant have not referred to the Honourable Supreme Court Judgments, which have to be complied with by this Tribunal. By implication, it would mean that the applicant is aware that he is not eligible to approach this Tribunal to ventilate his grievance of enhanced wages as an outsourced employee on the rolls of a labour contractor.

B. The points 1 to 4 raised above, are all about outsourcing staff and contract. As explained in the original application there is no employer and employee relationship between the applicant and the respondents. Such a relationship does exist between the 3rd respondent who is labour contractor and the applicant. Therefore, the matter is beyond the purview of this Tribunal. The applicant himself admits that he is an outsourcing staff and that the labour contract is just a sham. Labour contracts are to be dealt in the Labour court. It is not known as to why the applicant is approaching a wrong forum for redressal of his grievance and losing precious time.

C. Coming to point 5, applicant has every right to contest on articles quoted in the competent forum. This Tribunal is not averse in adjudication the issue but the jurisdictional aspects are to be respected. Tribunal should not and cannot encroach on to the jurisdiction of competent forums which are enjoined upon to deal with the grievance of the applicant.

D. In the context of point number 6, norms related to a Review application do not permit any new submissions to be considered. However, reckoning the fact that the applicant could lay his hands on the purported information later to the OA being filed, the same is dealt. Delving on the point proper, it is seen that the applicant has grossly erred by stating that the 3rd respondent is the Welfare Commissioner though factually he is the labour contractor. That apart, the issue is all about an internal correspondence in regard to termination of contract of

outsourcing staff provided by a labour contractor, which does not fall under the domain of this Tribunal.

E. Reverting to the last point at number 7, the learned counsel for the applicant has orally submitted mostly about elements of labour contract and related issues. As was stated in the OA the learned counsel was heard and the documents submitted were gone into. It is not that oral submissions were not considered. They were, but only those relevant were touched upon and other irrelevant submissions were ignored, in delivering the judgment. Brevity is required in delivering a judgment as observed by Honourable Supreme Court in **Surjeet Singh v. Sadhu Singh, 2018 SCC OnLine SC 2658**, decided on 03.12.2018 by focussing on what is relevant.

6. Besides, a plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167]. The review also does not fall under any of the categories prescribed by the Apex Court in the case of State of W.B. vs Kamal Sengupta (2008) 8 SCC 612 which are as under:-

35. The principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

7. The Review application thus fails and is dismissed in circulation. No order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 7th day of January, 2018

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