

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

Original Application No.20/355/2018 & MA 395/2018

Reserved on: 20.12.2018

Order pronounced on: 27.12.2018

Between:

1. Penamala Mallikharjuna, aged about 32 years, Group C,
S/o. P. Seenaiiah, Dresser-cum-Attendant (On outsourcing basis)
Beedi Workers Welfare Fund Dispensary,
Labour Welfare Organization, Government of India,
Atmakur – PO, SPSR Nellore District – 524322, A.P.
2. Kurapati Anitha, aged about 23 years,
D/o. Kurapati Seenaiiah, Sweeper (On outsourcing basis)
Beedi Workers Welfare Fund Dispensary,
Labour Welfare Organization, Government of India,
Atmakur – PO, SPSR Nellore District – 524322, A.P.

...Applicants

And

1. Union of India,
Rep. by its Secretary to the Govt. of India,
Ministry of Labour & Employment,
Sharam 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.

...Respondents

Counsel for the Applicants ... Mr. T. Koteswara Rao

Counsel for the Respondents ... Mr. B. Laxman, Advocate for
Mrs.B. Gayatri Varma, Sr.PC for CG

CORAM:

Hon'ble Mr. B.V. Sudhakar

... ***Member (Admn.)***

ORDER

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

2. The OA is filed seeking a direction to the 2nd respondent to pay wages equivalent to the minimum of the lowest scale in the establishment of the 2nd respondent.

3. Brief facts of the case are that the applicants are engaged as Dresser cum Attendant and Sweeper on outsourcing basis in the respondents organisation. The first applicant was initially engaged for 89 days on consolidated wages of Rs.6700/- p.m and thereafter extended for a period of two years up to 30.4.2018. The 2nd applicant was engaged as sweeper on outsourcing basis through the 1st applicant and she is being continued with a consolidated wage of Rs.6700/- p.m till 30.4.2018. The applicant filed an MA 395/2018 where in it was informed that the respondents have started paying higher wages of Rs.12,000/- p.m w.e.f from 1.1.2018 on receiving notice from this Tribunal on 17.4.2018, as per G.O No 151 of Govt. of Andhra Pradesh. The applicants are praying to direct the respondents to release arrears of wages as per cited G.O from 1.8.2016.

4. The contentions of the applicants are that there is a direct employer and employee relationship between the applicants and the respondents. The applicants cited the Honourable Supreme Court judgment in State of Punjab and ors vs Jagjit singh and ors (2017)1 SCC 148 wherein it was held that contractual staff like the applicants shall be paid wages equivalent to the minimum basic of the bottom scale of the concerned establishment.

5. Respondents contend that applicants are not Govt. employees and hence do not come under the jurisdiction of the Tribunal. They are outsourced

employees. Section 14 of the A.T Act, 1985 does not apply to the applicants. The outsourcing contractor supplies manpower as per requirements of the department. The man power supplier supplies the manpower and raises a bill on the respondents and that the manpower supplier is responsible for the payment of minimum wages. The manpower supplier is bound by the Govt. rules and regulations and that the employee –employer relationship of the applicants is with the contractor and not with the respondents. The contract is with the manpower supplier and not with the applicants. Grievances of the applicants ought to be taken with the manpower supplier. Applicants can approach the competent court dealing with labour laws. The respondents have cited the Honourable Supreme Court judgment in Vishaka vs M/s Syndicate Bank terming the claim of the nature in question, as a back door entry.

6. Heard the learned counsel and went through the documents submitted.

7A. The different clauses under comprehensive guide lines on Outsourcing issued by the respondents, enclosed with the OA are as under:

(i) Clause I (a) (1):

The service provider agency will engage a certain number of personnel and deploy equipment to meet the specific standards prescribed for that function in the contract. In this case the functionaries continue to be the employees of the service provider agency during and even after, their assignment with the Department/ organisation. The charges/ remuneration for these services will be provided by the service provider/agency.

(ii) (Clause IV)

The service provider is provided a commission of not more than 5 % of the remuneration paid to the functionaries.

(iii) (Clause V)

The contract will be under the contract labour act.

(iv) (Clause VII -3)

The service provider shall remit the amount of remuneration directly to the individual bank account of the functionary.

B. A reading of the aforesaid clauses does prove that there is no employer – employee relationship between the applicants and the respondents. They are outsourced employees provided by a manpower supplier. The onus of responsibility totally lies with the manpower supplier in all respects as per the comprehensive guidelines. The learned counsel for the applicants has submitted that the respondents have directly engaged the applicants but the fact to be noted is that they are outsourced employees. They are not civil post holders to be eligible to agitate before this Tribunal in a matter pertaining to labour wages. The responsibility of paying wages lies with the manpower supplier. If he does not, then the applicants have to contest before the competent forum dealing with labour contract and labour laws. One another contention reiterated by the learned counsel for the applicants in the written arguments submitted, is that the applicants are under the direct employment of the respondents and not contractual. In other words, it is being argued that the applicants are to be treated on par with the Govt. Servants. As per DOPT memo F.No 14014/02/2012-Estt (D) dt 16.1.2013, a Govt. servant is one who is appointed on a regular basis and not one working on daily wage or casual or apprentice or adhoc or contract or re-employment basis. The applicants have not been appointed on a regular basis, for which the mandatory provisions laid down under recruitment rules have to be followed. No such exercise has been undertaken in regard to the applicants. Besides, there is no other documentary evidence on record to confirm that the applicants ought to be treated as if they are in direct employment of the respondents. A similar OA 335/2018 was dismissed by this Tribunal on the basis of Honourable Supreme Court

judgments in P.Lal v U.O.I reported in AIR 2003 SC 1499, U.O.I v Gobinda Prasad Mula, AIR 2013 SC 1074 and P.U Joshi v Accountant General, Ahmedabad reported in AIR 2003 SC 2156, wherein the jurisdiction of this Tribunal has been dealt at length. The judgment cited by the applicant is not relevant as the question involved in the OA is about the jurisdiction of this Tribunal. Thus the applicants have not made out a case.

C. Hence the OA is dismissed for aforesaid reasons. MA 395/2018 also stands dismissed. There shall be no order as to costs.

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

Dated, the 27th day of December, 2018

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