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Court : Allahabad

Decided On : Sep-16-2003

Reported in : (2004)ILLJ332All; (2004)1UPLBEC69

Judge : Rakesh Tiwari, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 7, 10 and 12

Appeal No. : C.M.W.P. Nos. 39734 and 42264/1997

Appellant : Arvind Kumar Awasthi and ors.

Respondent : State Bank of India and ors.

Advocate for Def. : Navin Sinha, Adv.

Advocate for Pet/Ap. : Prashant Mishra, ;S.S. Tripathi, ;A.P. Tewari and ;B.P. Srivastava, Advs.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.

2. This petition has been filed by the petitioners with the allegations that the petitioners have been engaged without following (i) the requirement of Section 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 (ii) used as camouflage and a smoke screen through a contractor for discharging duties in the nature of dusting, cleaning, sweeping etc. in the Staff Training Centre of the Bank. The following prayer has been made:

PRAYER

(1) Issue a writ order or direction in the nature of certiorari quashing the tender notice dated August 11, 1997 published by respondent No. 3.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to enforce the notification dated December 9, 1976 for abolishing the contract labour system, and to absorb the petitioners from the date of their engagement in the State Bank of India Staff Training Centre, Varanasi.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to pay their minimum wages with all consequential service benefits and not to create any hurdle in the functioning of the petitioners in the State Bank of India Staff Training Centre, Varanasi.

(iv) Any other writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(v) To award the cost of this petition to the petitioners.

3. It is alleged by the petitioner that by notification dated December 9, 1976 issued under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the management is prohibited from employing contract labour w.e.f. March 1, 1977 for the purposes of sweeping, cleaning, dusting and watching of buildings occupied by the establishment- The notification dated December 9, 1976 is as under:

'NOTIFICATION

New Delhi, December 9, 1976

In exercise of the power conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of Contract Labour on and from March 1, 1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishments in respect of which the appropriate Government under the said Act is the Central Government.

Provided that this notification shall not apply to the outside cleaning and other maintenance operations of multi-storied buildings where such cleaning or maintenance operations cannot be carried out except with specialised experience.

Sd./-D. Bandyopadhyay,

Joint Secretary.'

4. It is submitted that the petitioners are entitled to absorb from the date of their initial engagement in State Bank of India Staff Training Centre, Varanasi.

5. Counsel for the respondent submits that the aforesaid notification on which reliance is being placed came up for consideration before the Hon'ble Apex Court in the case of Steel Authority of India v. National Union Waterfront Workers AIR 2001 SC 3527 : 2001 (7) SCC 1 : 2001-II-LLJ-1087. In the aforesaid judgment, the Apex Court while quashing the said notification has held that:

'The impugned notification apart from being an omnibus notification does not reveal compliance with Section 10(2). This is ex facie contrary to the postulates of Section 10 of the Act, besides it also exhibits non-application of mind by the Central Government, Therefore, the said notification is not sustainable.'

6. It was further held that it was not possible to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

7. Thus the controversy raised in the above noted petitions stands concluded against the petitioner by ratio of the said judgments of the Apex Court in the case of Steel Authority of India and even in case of valid abolition of contract labour the question of absorption would not arise and even in case of failure to follow the requirement of Sections 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 would not create a permanent direct relationship of master and servant between the principal employer and the contract labour. At the most, non-compliance would make the principal employer and the contractor liable for action under the Act.

8. For the reasons stated above the writ petition fails and is dismissed. No order as to costs.

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