

Narender Kumar and Ors. Vs. Union of India and Ors.

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Court : Delhi

Decided On : Jul-13-2015

Judge : Deepa Sharma

Appellant : Narender Kumar and Ors.

Respondent : Union of India and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5701/2015 & CM No.10239/2015 Judgment reserved on:

28. 05.2015 Judgement pronounced on:

13. 07.2015 NARENDER KUMAR AND ORS. Through: Petitioners Mr.Mahesh Srivastava, Advocate alongwith Mr.Vaibhav Manu Srivastava, Advocate. versus UNION OF INDIA AND ORS. Respondents Through: Mr.Ripu Daman Bhardwaj, Advocate alongwith Mr.Rajkumar Dahiya, Advocate for R-1 and R-2. Mr.Anuj Aggarwal, Advocate for R3. CORAM: HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1 The petitioners case is that Lady Hardinge Medical College/ respondent no.3 and M/s. M.S. Vigilant Security/respondent no.4 had entered into the agreement dated 15.07.2009 for providing Security Guards to respondent no.3. The petitioners have been working as security guards pursuant to the said agreement

and they have been continuously discharging their duties since 2009. They have been regularly paid their wages in time but from the last two years, there was interruption/delay in payment of wages but despite that they continued to work for respondent no.3. Respondent no.4, the Contractor had not paid them the wages. The wages were also not paid by respondent no.3, the principal employee.

2. Thereafter, the union on behalf of petitioners filed a complaint before respondent no.2 demanding the payment of the wages. The conciliatory efforts made by respondent no.2 however failed. The respondent No.3 had avoided the payment to the petitioners and now the respondent no.3 had decided to engage another Contractor in place of Respondent no.4. Their contract was extended upto 31.05.2015 and thereafter it was further extended upto 31.05.2015 and all the petitioners were asked to make their own arrangement.

3. It is submitted that the responsibility to pay the wages under Section 21 of The Contract Labour (Regulation & Abolition) Act, 1970 is that of contractors. However, the principal employer is duty bound to appoint authorised representative to oversee the disbursement of the wages and on failure of the contractor to pay the wages, the liability shifts upon the principal employer to pay the wages. It is submitted that if the contract is terminated and they become unemployed, it would be difficult for them to recover their wages. It is also contended that the Supreme Court in the case of Steel Authority of India Ltd. vs. National Union Waterfront Workers (2001) 7 SCC1 has held that principal employer should give preference to the contract labour in case the principal employer intends to employ regular employee in place of contract labour by giving relaxation in age etc. On these facts, it is prayed that respondent no.3 be directed not to replace petitioners by a fresh contract labours without giving them the right of consideration in respect of their employment in the establishment and make the payment of wages to the petitioners which is due since 1st November, 2014.

4. Arguments have been heard in the present case.

5. From the contentions itself, it is apparent that the contract between respondent no.3 and contractor/respondent no.4 had been expiring by efflux of time w.e.f. 31.05.2015. The petitioners are Contractor's employee working for respondent

no.3 under the said contract. The respondent no.3 is replacing these contract employees/the petitioners only by way of tendering the work by way of fresh contract. There is no contention that the respondent no.3 is in the process of employing regular employees in place of the contract workers. Hence, the principles laid down in Steel Authority of India (supra), is not applicable to the facts of this case. The respondent No.3 has every right to outsource the work under fresh Contract.

6. The petitioners have also relied to the findings of the Supreme Court in the case of R.K. Panda & Ors vs. Steel Authority of India and Ors reported in (1994) 5 SCC304 to substantiate their claim that they are entitled to continue to work for respondent no.3. I have given careful considerations to the findings in the case of R.K. Panda (supra).

7. In the R.K. Panda case (supra), the contract workers claimed parity in pay with regular employees and also regularisation in the employment of the said authority on the ground that they had been in the employment for the period ranging from 10 to 20 years and allegedly been treated as contract labourers only for defeating their claims. In the present case, there is no contention that the Contract was sham or the respondent no.3 is going to replace them by appointing regular employees. The petitioners have desired that the respondent no.3, their principal employer, be restrained from out sourcing the work (they were employed for) by way of fresh tender to some other contractor and have also prayed that they should be allowed to continue to work for respondent no.3, the principal employer on the ground that otherwise it would be difficult for them to recover their unpaid wages from November, 2014.

8. The Supreme Court in the R.K.Panda case (supra) has observed as under:

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognised contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any

expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that appropriate Government may after consultation with the Central Board or the State Board, as the case may be, prohibit by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trend amongst the contract labourers is discernible that after having worked for some years, they make a claim that they should be absorbed by the principal employer and be treated as the employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be State within the meaning of Article 12 of the Constitution, although no right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer. This Court in the case of *Gammon India Ltd. vs. Union of India*, pointed out the object and scope of the Act as follows:

The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act.

9. There is no dispute in the present case that respondent no.3 had been engaging the security guards on contract basis through the contractor. The contract under which the petitioners had been employed, had come to an end on 31st May, 2015 and thereafter they apparently have no existing right to continue to work for respondent no.3.

10. Under the Contract Labour (Regulation & Abolition) Act, 1970, the principal employer has only limited duties towards the contracted employees and these duties are in operation only till the existence of the said contract.

11. In its earlier judgments like Mathura Refinery Mazdoor Sangh vs. Indian Oil Corpn. Ltd reported in (1991) 2 SCC176 the Supreme Court had refused to issue any direction to the Indian Oil Corporation Limited to absorb the contract labourers in its employment, holding that there was no relationship of an employer and employee between the Indian Oil Corporation Limited and contract labourers concerned.

12. The Supreme Court in the case of R.K. Panda (supra) has also observed as under: It is not possible for the High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavit. It need not be pointed out that in all such cases, the labourers are initially employed and engaged by the contractor. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent for to adjudicate such disputes on the basis of the oral and documentary evidence produced before them.

13. Thus, the proposition of law laid down in R.K. Panda (supra) does not in any way help the petitioners. In that case, Court had ordered the absorption of the contract labourers only on the ground that the contract workers were working through the contractors continuously for the last 10 years on different jobs pursuant to several orders of the Court, thus the directions were peculiar to that case only.

14. The petitioners since have been working with the respondent no.3 as a contract labourer only since 2009 and thus have not worked for 10 years or more, cannot claim parity of directions issued in R.K. Panda case. The facts in both cases are poles apart.

15. As regards the payment of the wages and their entitlement to the wages w.e.f November, 2014 or whether the wages have been paid or remained unpaid or whether are entitled to other benefits and the matter as to whose liability is to pay the wages, are questions which can be determined only on the basis of the facts required to be proved on record and for that the petitioners are needed to approach the proper forum under the Industrial Disputes Act. Even if there is no dispute regarding the entitlement of the petitioners for the wages and only the quantum of the wages is required to be determined, the forum available to the petitioners is still under Industrial Disputes Act. The petition alongwith the pending application, for the foregoing reasons, is hereby dismissed in limine. DEEPA SHARMA (JUDGE) JULY13 2015 sapna

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