

Vijendra Kumar and ors. Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-13-2001

Reported in : 2002(63)DRJ224

Judge : Mr. Vikramajit Sen, J.

Acts : Contract Labour (Regulation & Abolition) Act, 1970 - Sections 10;
Employment Exchange Act

Appeal No. : CWP No. 7377 of 1999

Appellant : Vijendra Kumar and ors.

Respondent : Union of India and ors.

Advocate for Def. : Mr. V.N. Kaura, Sr. Adv., ; Ms Kailash Gulani and ; Ms Para

Advocate for Pet/Ap. : Mr. S.M. Garg, Adv

Disposition : Writ petition dismissed

Judgement :

ORDER

Vikramajit Sen, J.

1. The Petitioners have alleged that they had been employed with the Indian Oil Corporation for some time. There is no evidence supporting this bare assertion. It

is not the case of the Petitioners that they were employed through the regular channel of recruitment. The averments made in para 7 of the writ petition call for reproduction:

'That while the Petitioners have been continuously engaged for a sufficiently long period, however, the officers of the Respondent Corporation with an intention not to create an evidence for their continuous employment, have been devising very unimaginitive and new methods for payment of their monthly salary. Some times the salary is paid on the bills prepared in the name of the officers under the Head 'Miscellaneous Expenses, Labour Charges and other Misc. Jobs'. At other times when one such employee is engaged continuously for a few months, the bills of his salary are made in some fictitious name so as to deny him the claim for a continuous employment. However, the fact remain that there is a direct relation of employer and employee between the Petitioners and the Respondent Corporation and the Petitioners are engaged for the duties of permanent nature. The Central Government, which is the appropriate authority in regard to the Respondent Corporation in reference to the Contract Labour (Regulation & Abolition) Act, 1970 has vide Notification dated 21.10.97 issued under Section 10 of the 1970 Act declared the jobs of Peon in the Offices of the Plants, Depots and Terminals of Indian Oil Corporation, a job of perennial nature and prohibited the employment of contract labour for the said job. A true copy of the said Notification dated 21.10.1997 is annexed as Annexure P-2.'

2. The case of the Respondents is that the Indian Oil Corporation Strictly adheras to prescribed norms of recruitment which are in consonance with the law and take into account all the obligations cast upon the Respondent including those of giving employment to persons belonging to the reserved categories. It has been placed by the Respondents, inter alia, as follows:

'So far as the Corporation is concerned there do not exist any post, whether permanent or temporary much less vacant posts against which the petitioners or any of them could have been employed whether on a permanent, temporary or casual basis. The Corporation has no record of any appointment or employment of the Petitioners or any of them against any post, whether permanent or temporary

or casual, and even otherwise the Corporation has no record of any illegal or unauthorised appointment or employment of the Petitioners or any of them by or on behalf of the Corporation.'

3. It is contended by Mr. V.N. Kaura, Learned Senior Counsel appearing on behalf of Respondent that if some back-door entries have been resorted to, this does not bestow any right on the Petitioners. It is contended that the decisions of the Hon'ble Supreme Court make it obligatory on the Respondent to take necessary steps to put an end to this evil practice. Reliance is placed on the following observations made in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and others, : (1992)ILLJ452SC :

'15. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences of which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. the employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they job the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who

bear the heavy burden of the surplus labour. The other equally injuries effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts.

16. In the circumstances, it is not possible to accede to the request of the petitioners that the respondents be directed to regularise them. The most that can be done for them is to direct the respondent-Delhi Administration to keep them on a panel and if they are registered with the Employment Exchange and are qualified to be appointed on the relevant posts, given them a preference in employment whenever there occurs a vacancy in the regular posts which direction we give hereby.'

4. Similar observations were also recorded by another Bench of the Apex Court in *State of Haryana and others, etc. etc. v. Piara Singh and others, etc. etc.*, : (1993)ILLJ937SC , which are reproduced as under:

'12. As would be evident from the observations made and directions given in the above two cases, the court must, while giving such directions, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. Now, take the directions given in the judgment under appeal. Apart from the fact the High Court was not right -- as we shall presently demonstrate in holding that the several conditions imposed by the two Governments in their respective orders relating to regularisation are arbitrary not valid and justified -- the High Court acted rather hastily in directing wholesale regularisation of all such persons who have put in one year's service, and that too unconditionally. We may venture to point out the several problems that will arise if such directions become the norm:

(a) Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalising the selections and making the appointments. Very often the process of selection is stayed or has to be re-done for one or the other reason. Meanwhile the exigencies of administration may require appointment of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalised. Now according to the impugned direction the temporary hands completing one year's service will have to be regularised in those posts which means frustrating the regular selection. There would be no post left for regularly selected persons even if they are selected. Such cases have indeed come to this court from these very two States.

(b) In some situations, the permanent incumbent of a post may be absent for more than a year. Examples of this are not wanting. He may go on deputation, he may go on Faculty Improvement Programme (F.I.P.), or he may be suspended pending enquiry into charges against him and so on. There may be any number of such situations. If a person is appointed temporarily in his place and after one year he is made permanent where will the permanent incumbent be placed on his return? Two persons cannot hold the same post on a regular or permanent basis.

(c) It may also happen that for a particular post a qualified person is not available at a given point of time. Pending another attempt at selection later on an unqualified person is appointed temporarily. He may continue for more than one year. If he is to be regularised, it would not only mean foreclosing of appointment of a regular qualified person, it would also mean appointment of an unqualified person.

(d) Such directions have also the effect of disregarding and violating the rule relating to reservations in favor of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner.

(e) Many appointments may have been made irregularly - as in this case - in the sense that the candidates were neither sponsored by the Employment Exchange nor were they appointed after issuing a proper advertisement calling for applications. In short, it may be a back door entry. A direction to regularise such appointments would only result in encouragement to such unhealthy practices.

These are but a few problems that may arise, if such directions become the norm. There may be many such and other problems that may arise. All this only emphasises the need for a fuller considerations and due circumstances while giving such directions.....17. Now coming to the direction that all those ad hoc/temporary employees who have continued for more than an year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him -- which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are in addition to some of the problems indicated by us in para 12, which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no 'rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this standpoint, the impugned directions must be held

to be totally untenable and unsustainable.'

5. From a reading of the extract of paragraph seven of the writ petition it is apparent that the Petitioners have also relied on the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. At the time of the filing of the writ petition the legal regime was laid down in the *Air India Statutory Corporation, etc. V. United Labour Union and Others, etc.*, : (1997)ILLJ 1113 SC . This decision has now been overruled by the Constitution Bench of the Apex Court in *Steel Authority of India Ltd. & Ors. etc. etc. v. National Union Water Front Workers & Ors. etc. etc.* It has clarified that even where a Notification prohibiting the employment of contract labour exists the workmen must be left to seek their remedy under the Industrial Disputes Act.

6. Seen in all its complexities, the writ petition is without merit. There is no evidence whatsoever showing that the Petitioners have been working for the Indian Oil Corporation form the periods baldly stated by them. Even if they had been working for this period, since their initial employment was irregular it is the duty of the Court to ensure that the malpractice of back-door employment is not perpetuated but is in fact brought to an end. Interim relief in such employment, therefore, are not called for at all. In *Steel Authority of India's case (supra)* it has now been clarified that the appropriate forum for seeking all the reliefs prayed for in this case, would be under the Industrial Disputes Act. This view is further fortified by the consideration that if the services of a regular workman are terminated he must challenge the termination as illegal and must await the passing of an Award for his reinstatement with back wages or without back wages. It would be paradoxical and inequitable if persons employed on ad hoc basis, or by the back-door method, or contract basis are eligible for jural protection which is not available to regular employment. The writ petition is without merit.

7. Dismissed.