

Surendra Kumar and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-24-2001

Reported in : (2001)IILLJ905Raj; 2002(1)WLC337

Judge : Arun Madan, J.

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

Appeal No. : C.W.P. No. 4981/1999

Appellant : Surendra Kumar and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : Manoj Sharma, Adv.

Advocate for Pet/Ap. : Ravi Kasliwal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Arun Madan, J.

1. The undisputed facts are that the petitioners were employed through a contractor for the work of the Municipal Council, Kota (respondent No. 2) (for short respondent Council) since 1995 i.e. from the date of establishment of Ward No.

36. The respondent Council is an establishment and its main function is to keep the City of Kota clean apart from other functions. The petitioners contended that they performed the same work which is being performed by other permanent employees appointed by the Council and the only difference between these employees and the petitioners is that the petitioners have been employed through; contractor whereas regular employees (sweepers) have been appointed by the Council directly. As regards the nature of job and working hours of the petitioners, there is no difference between them and regular employees of the Council and as such, the petitioners case is that they stand on similar footing and they are entitled for all benefits which are being given to the employees appointed by the Council. The petitioners have also placed reliance upon the certificate (Annexure 1) showing that the work performance of the petitioners during 1995-99 in Ward No. 36, Vasant Vihar Balakund was found satisfactory.

2. Mr. Ravi Kasliwal, learned counsel for the petitioners placed reliance upon the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act') which provides as under:

'10. Prohibition of employment of contract labour-

(1) Notwithstanding anything contained in this] Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour in any] process,' operation or other work in any establishment.

(2) Before issuing any notification under Sub-Section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that it is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ' considerable number of wholetime workmen.'

Section 2(e) of the Act runs as under: (e) 'establishment' means-

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade,business, manufacture or occupation iscarried on;

3. It has been contended by the learned counsel for the petitioners that as per the petitioners' knowledge the Council has not been notified under the provisions of Section 10 of the Act as an establishment and as such no work of Council can be executed by engaging contract labour. It was further contended that the Council had engaged the petitioners through contractor who in turn had appointed the petitioners to carry on the work of the Council and it is the Council which is making the payment as regards the wages through the contractor meaning thereby that the petitioners are working indirectly under the control of Council. As such, the petitioners although were engaged through the contractor for keeping the city clean, but in fact, they are the employees of respondent Council and, therefore, there can be no justification to treat the petitioners daily wagers as compared to the workers directly appointed by the Council and they had been working under the direct control of the Council looking to the nature of their duties qua the regular employees appointed by the Council directly. Hence, right to regular appointment cannot be denied to the petitioners. It was further contended that the petitioners had made several representations in the past to the Council to give them regular pay scales but, no attention was paid to their representations and as such, they were left with no other efficacious remedy except to invoke the jurisdiction of this Court by way of this writ petition.

4. The grounds on which the petitioners have stacked their claim are:

a) that as per the petitioners' knowledge, the Council has not been notified under the Act and even if it is notified then looking to the nature of work being done by the petitioners, contract labour system should be abolished and the petitioners should be treated as the employees of principal employer i.e. the respondent council. Nature of work performed by the petitioners was not casual, but perennial for years together and as such upon abolishing the contract labour system, the petitioners should have been absorbed in the establishment of the respondents council;

b) that the petitioners carried out the work of the Council which is of perennial in nature otherwise, it would have been done by the regular employees appointed by the Council and as such looking to the nature of work performed by the petitioners, they are entitled for getting the regular appointment in the office of the respondents council; and

c) that as per the provisions of Section 12 of the Act, no person shall undertake any work through a contract labour except under and in accordance with a licence. Licence is a condition precedent to obtain contract work in the establishment. Contractor who appointed the petitioners as contract labour is having no licence, as such respondents cannot get executed their work through contractor who does not have any licence. As such, petitioners are not working under the control of the contractor, but working under the control of Council, and therefore they are entitled to get the regular appointment.

5. In support of his aforesaid contentions, learned counsel for the petitioners has placed reliance upon the decisions of the Apex Court in 1) Air India Statutory Corporation v. United Labour Union AIR 1997 SC 645 : 1997 (9) SCC 377 : 1997-I-LLJ-1113. Vegoils (P) Ltd. v. Workmen, AIR 1972 SC 1942 : 1971 (2): SCC 724 : 1971-II-LLJ-567 SC Secretary, H.S.E.B. v. Suresh, AIR 1999 SC 1160 : 1999 (3) SCC 601 : 1999-I-LLJ-1086.

6. In reply to show cause notice the respondent Council has specifically stated that the petitioners were not employed by it. It has been denied that the petitioners

are performing the similar duties to that of the permanent employees of the Council. It has also been denied that petitioners stood on similar footing than that of regular employees of the Council and that they are also entitled to the same benefits as admissible to the regular employees. It has further specifically been stated that in fact contract was given to the contractor for cleaning Ward No. 36 and for that purpose 7 workers are being sent by the contractor every day and the Council is not concerned about the individual worker as they are not under direct control of the respondents council.

7. As regards the petitioners' contention that no labour can be appointed on contract basis in any establishment unless such establishment is notified by the State Government under Section 10 of the Act after obtaining prior approval of the Central Board, it has been contended by the respondents council that since the petitioners were engaged through a contractor for cleaning Ward no. 36 temporarily after obtaining permission from the State Government, as such, the provisions of the Act do not apply to the instant case. Moreover, the respondents have specifically denied that the petitioners have been employed directly by the respondents. The respondents have further denied that the petitioners are performing the same duties similar to regular employees of the respondents council, and therefore, the benefit as admissible to its regular employees cannot be extended to the petitioners as well.

8. During the course of hearing, Mr. Manoj Sharma, learned counsel for the respondents has vehemently contended that the the Council is not concerned about the individual workers since they do not work under its direct control. So far as the certificate of satisfactory performance of the petitioners issued by the Ward Jamadar is concerned, the learned counsel has vehemently contended that the document (Annexure 1) does not bear name of the Ward Jamadar and moreover Ward Jamadar has no authority to issue such certificate as such, no reliance can be placed thereon. Hence, the petitioners are not entitled to claim regularisation and regular pay scales as they are appointed by the contractor, permission thereof from the State Government has already been obtained by the Council. As such the petitioners cannot be treated as its regular employees. The learned counsel for the council has further stated that the workers employed by the contractor have no

similar status as to the employees of the Council directly. The wages of the workers are paid by the contractor, the materials, apparatus etc. are also supplied by the contractor and as such, the Council has no direct or indirect control over the workers employed by the contractor.

9. I have heard the learned counsel for the parties; perused relevant documents on record, and examined legal position on the subject.

10. In *Air India Statutory Corporation v. United Labour Union* (supra), the question which arose before the Apex Court was in the context of interpretation of provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The Apex Court laid down the principles for determination of 'Appropriate Government' in relation to an establishment pertaining to an industry as per Section 2(l)(a) (as it stood before and after the Amending Act 14 of 1986) and also held that the interpretation should be based on public law principles and not on common law principles and that statutory corporation involving public element, even though carrying on commercial activities would be an industry carried on by or under authority of Central Government, because element of deep and pervasive government control is not the sole criterion. It was a case where appellant Air India Corporation was initially a statutory authority under International Airports Authority of India Act, 1971 but later on due to change in law and in order to be in tune with open economy, it became a company registered under Companies Act, therefore, the Apex Court held that in respect of the appellant Air India Corporation, Central Government would be the appropriate Government under Section 2(1)(a), as it stood before as well as after the 1986 amendment.

11. While holding that provisions of the social welfare legislation providing socio economic empowerment to workers and poor class should be construed in the light of public law principles instead of private or common law principles, the Apex Court also held that though the right to work of such workers cannot be claimed as fundamental right, but after employment to a post or office, be it under the State, its instrumentality, juristic person or private entrepreneur, an employee must be dealt with as per public element and in public interest assuring him equality.

12. Having carefully perused other decisions in *Vegoils (P) Ltd. v. The Workmen* (supra) and *Secretary, HSEB v. Suresh* (supra) so also the decision considered and discussed above, and without disputing the dictum of law laid down in those cases (supra), I am of the view that the ratio of these cited decisions are not attracted to the instant case since the petitioners have not been able to place on record any notification issued by the State Government under Section 10 of the Act, from which it may be inferred that the respondent Council is an establishment having been notified under the Act, therefore, it cannot legally be assumed that they were regular employees of the respondent Council or that the work performed by them was under direct control of the respondent Council. Consequently, the petitioners cannot claim any right of regularisation of their work under the contractors of the respondent Council and hence no such relief can be given to them at par with regular employees of the respondent Council.

13. The petitioners themselves have not stated as to how they have been working in direct control of the respondent Council and in the absence of the relationship between employer and employee being established the question of their seeking absorption in the establishment of the respondent Council besides their regularisation and other benefits as admissible to regular employees of the Council, would not arise and hence the ratio of the aforecited decision of the Apex Court being distinct would not help the petitioners in advancing their case as they are on no different footing than that of regular employees of the respondent Council in the facts and circumstances of the instant case, because it is a question which requires to be determined in the facts and circumstances of each particular case.

14. My view is fortified from the following observations made by the Apex Court in *Dena Nath v. National Fertilizers Ltd.*, AIR 1992 SC 457 ; 1992 (1) SCC 695 : 1992-I-LLJ-289 SC at p. 296 of LLJ:

'20. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered under

Section 10 of the Act.....'

'..... We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer

15. Though it was a case having been cited by the learned counsel for the petitioners, but ratio of decision in Dena Nath v. National Fertilizers (supra) in fact goes against them. In that case the Apex Court also held that labour employed by principal employer through contract cannot thereby be deemed to be direct employees of the principal employer in absence of any notification under Section 10 of the Act as this Section prohibits employment of contract labour in the establishment concerned, inasmuch as the High Court in exercise of power under Article 226 cannot issue direction for deeming the contract labour as direct employees of the council.

16. In the present case the petitioners themselves have admitted in para 6 of the petition 'that the Municipal Council has not been notified under Section 10 of the Act, as such no work of the council can be executed by appointing contract labour.' Hence, the question of petitioners' seeking regularisation as admissible to the regular employees of the respondent Council in the light of the dictum of law laid down by the Apex Court in Dena Nath's case (supra), would not arise. Further the respondents have emphatically stated that the Council had not employed the petitioners directly, therefore, the question of their performing similar duties at par with regular employees of the Council does not arise and hence they cannot be equated with those regular employees of the Council.

17. In my considered opinion, the petitioners are not entitled to claim right of regularisation as well as regular pay scales qua regular employees of the Council. Moreover, the nature of work of the petitioners is casual in nature on daily wage basis and as such they cannot be treated at par with regular employees of the Council particularly when the petitioners have not shown any document to the effect that they were ever appointed by the Council directly or they are working

under direct control of the Council.

18. Furthermore, document on which the petitioners have relied is the certificate (Annexure 1) showing their performance 'satisfactory' does not at all help the petitioners in advancing the case in their favour because it is not an authentic document having not been issued by the Council whereas it has been issued by the Ward Jamadar (even whose name has not been shown, inasmuch as who is neither competent nor authorised to issue such certificate and that apart it would not by itself confer any legal right to the petitioners). Hence there is no violation of principles of natural justice as alleged against the respondents. I find no merit in any of the contentions advanced by the learned counsel for the petitioners.

19. Resultantly, this writ petition fails and , is hereby dismissed at the admission stage itself being not maintainable.

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