

(2014) 02 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17282 of 2006

Abdul Nasser

APPELLANT

Vs

Bharat Heavy Electrical Limited

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)

Citation : (2014) 5 ALD 657 : (2014) 5 ALT 39

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : M.L. Ali, Advocate for the Appellant; P. Rajasekhar, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioners, 11 in number, all of whom were said to be working as casual/contract labourers in the respondent company, filed the present writ petition seeking the regularisation of their services.

2. The facts in brief are that the petitioners were said to have been appointed on compassionate grounds during the year 1985-86, that since the date of their initial appointment, they have been working continuously in their respective posts discharging their duties, that their nature of work is similar to that of the regular employees, and that though they have completed more than 21 years of service as on the date of filing of the writ petition, their services have not been regularised. On that count, assailing the inaction of the respondent company, the petitioners filed the present writ petition.

3. Sri M.L. Ali, the learned counsel for the petitioners has submitted that all the 11 petitioners initially had their entry into the respondent company on compassionate grounds, since either of the parents of the petitioners died in harness.

4. The learned counsel has stated that though there is a clear policy in existence

with regard to providing employment to the dependent members of the family of the deceased workmen, in course of time, the respondent company took recourse to a device of establishing "BHEL Labour Cooperative Society Limited ("the Society", for brevity) under the provisions of the Andhra Pradesh Cooperative Societies Registration Act, 1964. Thus, despite the Recruitment Rules/Regulation 7.3, which provides for compassionate appointment, the respondent company converted the services of the petitioners, as if they were the members of the society and that their services had been engaged only through the said society. It is the specific contention of the learned counsel that only to avoid the regularisation, the respondent company came up with the device of the cooperative society, with which the petitioners have nothing to do and that even if they were engaged by the respondent company through the said society, they cannot be termed as contract labourers, more particularly when they had their initial appointment under a scheme of compassionate appointment. Accordingly, the learned counsel has stated that the action of the respondent company is grossly illegal and arbitrary.

5. In furtherance of his submissions, the learned counsel has brought to the notice of this Court that earlier a few other workmen, who had also got their entry into the respondent company under the scheme of compassionate appointment around the same time as did the petitioners had their services regularised in 1994 itself. Thus, by treating similarly placed persons differently, the respondent company has, contends the learned counsel, exhibited patent discrimination.

6. Subsequent to the filing of the counter affidavit on the part of the respondent company, the petitioners came up with reply affidavit placing on record additional information on the issue of the compassionate appointment, on the need of the regularisation of the petitioners' services and also with regard to the subsequent developments that have taken place. Thus, in tune with the reply affidavit filed by the petitioners, the learned counsel for the petitioners has contended that the 2nd and 8th petitioners died during the pendency of the writ petition. He has further submitted that to this day, for more than 27 years, the petitioners have been continuing as skilled workers on consolidated pay of Rs. 12,000/- per month, which includes P.F., BHEL quarters rent and water charges. It is also the specific contention of the learned counsel that the cooperative society is only a smoke screen, and in fact, it is practically managed by the respondent company itself.

7. The learned counsel has also referred to some of the by-laws and has contended that the respondent company has all-pervasive control over the society and as such it is untenable on the part of the respondent company to contend that the petitioners are the members of the said society and that it is the said society which has engaged them in the respondent company. The learned counsel has also referred to the contents of the counter affidavit filed by the respondent company and has stated that there is a specific admission on

their part that the labourers, who had been working with various contractors prior to the formation of the BLCCS, became the members of the said society voluntarily to reap the improved earnings and other benefits, wherein the middlemen are avoided. On this aspect, the learned counsel has stated that the respondent company has not specified who were the contractors, and who had been working under them prior to the formation of the said society.

8. According to the learned counsel, the respondent company has maintained lists of dependents of the deceased employees and had in fact got the original policy of recruiting the dependants of those deceased employees as and when vacancies arose. The learned counsel has also maintained a list of those employees or workmen who in fact got their services regularised in course of time under the category of compassionate appointment. Thus, treating this as ample evidence concerning the policy adopted by the respondent company consistently all through, the learned counsel contends that it is inexplicable why the petitioners alone have been victimised without having been regularised under the category of compassionate appointment.

9. Lastly, the learned counsel has stated that initially in the writ petition the petitioners listed out the names of eight workmen, who had their services regularised in 1994-95 under the category of compassionate appointment. Taking advantage of the wrong staff numbers provided to them in the pleadings, the respondent company, however, took advantage of that and went to the extent of denying the very existence of those employees. As a corrective step, the learned counsel has referred to the pleadings of the reply affidavit and stated that all those employees are in fact in the service of the respondent company and that now the list contains the names of those persons with their correct staff numbers.

10. The learned counsel has eventually submitted that it is not a case of fresh appointments, but only that of regularising the services of the petitioners, treating them as having been appointed under the scheme of compassionate appointment.

11. In support of his submissions, the learned counsel has placed reliance on the following precedents: 1. Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, 2. Visakhapatnam Port Trust and The Chief Engineer (Personnel Dept.), Visakhapatnam Port Trust Vs. Sanapala Govindu and Others, 3. Food Corporation of India and Others Vs. F.C.I. Paribahan Thikadhari Karamachari Samity and Others, and 4. R.K. Panda and Others Vs. Steel Authority of India and Others, .

12. Per contra, the learned Standing Counsel for the respondent company has strenuously opposed the claims and contentions of the petitioners. The learned Standing Counsel has laid heavy stress on the aspect that the petitioners have never been engaged by the respondent company directly and as such there is no employer and employee relationship. He has further contended that the petitioners are the members of the society, which is an independent legal entity having its own existence. As a matter of a procedural objection, the learned

Standing Counsel has also stated that the petitioners ought to have impleaded the said society, which is a necessary party. It is also the further contention of the learned Standing Counsel that the writ involves disputed questions of fact and as such this Court under Article 226 of the Constitution of India cannot be an appropriate forum to resolve those disputed questions of fact.

13. The learned Standing Counsel has further stated that the petitioners having voluntarily become members of the said society, it is the management of the society which determines the petitioners' service conditions, benefits or the emoluments. The learned Standing Counsel has specifically denied the aspect of all pervasive control of the Society by the respondent company or any governmental agency. He has submitted that out of the total nine directors of the Managing Committee, five are elected from among the society members as per the cooperative by-laws and four are nominated by the Government. Thus, the effective control of the society is exercised by the management on majority vote. In other words, the wages and other benefits of the petitioners, and for that matter, any member of the society is based on the Directors' Resolutions in the Board Meetings held periodically.

14. The learned Standing Counsel has also brought to the notice of this Court that earlier the very society filed W.P. No. 26349 of 2000 before this Court, but could not succeed in the writ petition to have the same relief of regularisation as has been sought in the present writ petition. Thus, the learned Standing Counsel has contended that the representative body of the petitioners i.e., the society, having lost its claim to the relief, now the petitioners seeking the same relief is nothing but an abuse of process. The learned Standing has also contended that the very writ petition is barred by res judicata.

15. Elaborating further on the need and necessity of having the society set up by the workmen themselves, the learned Standing Counsel has submitted that, considering the huge volume of turnover involved and the illiteracy of the workforce, initially they had been exploited by middlemen. Under those circumstances, it was considered necessary, for preventing the exploitation, to permit the workmen themselves to form a society. For its smooth functioning, out of nine directors of the Managing Committee, four Directors have been nominated by BHEL management and the rest have been elected from among the society members as per the cooperative by-laws. Thus, the learned Standing Counsel has emphasised the fact that the role of the company is absolutely limited and at best advisory in the affairs of the society.

16. Having reemphasised that the company has nothing to do with the society, the learned Standing Counsel has further adverted to Recruitment Rule 7.3 and has stated that the said Rule is subject to condition that the alleged dependent employee shall prove before the management as a matter of precondition that there is no earning member in the family of the deceased employee to claim the benefit of the compassionate appointment. The learned Standing Counsel has also referred to an amendment said to have been effected to the said Rule 7.3.

He has stated that only 25% of the vacancies are earmarked for being filled up with dependents of the deceased employees, such as spouse, son or unmarried daughter, and that they shall meet the requirements of job suitability and other qualification criteria. The learned Standing Counsel has submitted that the employment under compassionate category is not an automatic process but is subject to various limitations as have been set out in those regularisations.

17. Finally, the learned Standing Counsel has stated that the petitioners' claim, even assuming it to be true, is highly belated. Referring to those eight employees, whose services are said to have been regularised in 1994-95 after their initial appointment under the category of compassionate appointment, the learned Standing Counsel has stated that all of them have been appointed as per the recruitment rules and that they are not similarly placed as has been alleged by the petitioners. Having contended that the respondent company has no obligation to consider the petitioners' cases under the scheme of compassionate appointment, the learned Standing Counsel has stated that their claim, made through the society, has already been rejected and that only as a matter of stratagem to get over the earlier pronouncement of this Court, now the Society, through the petitioners, has come before this Court.

18. The learned Standing Counsel has also referred to the relief sought by the petitioners and has stated that the petitioners have never mentioned that it was the regularisation of their services under the category of compassionate appointment. In support of his submissions, the learned Standing Counsel has placed reliance on a judgment of the Hon'ble Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, .

19. Heard Sri M.L. Ali, the learned counsel for the petitioners and the learned Standing Counsel for the respondent company, apart from perusing the record.

The controversy:

20. On a perusal of the record, it can be said that the controversy in the writ petition, notwithstanding the very elaborate submissions of the learned counsel on either side, lies in a very narrow compass. It is an admitted fact that the petitioners have been working in the company for close to three decades. The only area of controversy is whether their initial entry was under the scheme of compassionate appointment or as contract labourers through the said society, which came into existence in a contemporaneous manner way back in 1996.

The Policy:

21. It is the case of the petitioners that when they have approached the authorities of the company to provide them employment under the scheme of compassionate appointment, they were asked to have their entry through the society. With a weak bargaining power, the petitioners, left with no other alternative, complied with the directions of the management and began their

career in the respondent company. It is indisputable that the fathers, or in some cases the mothers, of the petitioners were working in the company and they died in harness. There is no gainsaying the fact that the company has a specific policy of compassionate appointments under its service regulations. From the pleadings of the respective parties, it can be gathered that prior to the amendment of the regulation governing compassionate appointment, it read to the effect:

Recruitment Rule 7.3:

A Dependent of a deceased employee is eligible for special consideration for appointment in the company against a suitable vacancy in preference to others. This consideration is admissible even if his name is not sponsored by the employment exchange or if he has not applied against any advertisement, provided the applicant is otherwise eligible. It is, however, obligatory to notify such vacancies to the employment exchange concerned indicating in the requisition that the vacancy/vacancies in question are proposed to be filled in by dependents of deceased employee and that the submissions by the Employment Exchange are not required. Non-existence of an earning member in the family of the deceased employee is an important consideration in such cases.

22. The said regulation is said to have undergone an amendment and as per the pleadings of the Company after the said amendment it is as follows:

6.2 Dependents of deceased employees:

General guidelines to be followed for direct employment on compassionate grounds are as under.

1. Employee dying due to accident "during the course of" and "arising out of employment" - In such eventualities, existing practice of consideration on case to case basis for sanction of vacancy (USW/SSW/Artisan or Clerk) will continue keeping in view that none of the children or the spouse of such employees is already employed in Govt./Semi Govt./Autonomous Body/PSU/Organisations listed on Stock Exchange. Such appointment will, however, be subject to assessment of suitability.

2. In other cases of death:

i) In other cases, whenever Units are sanctioned vacancies of USW/SSW/Artisans and Clerk, up to 25% vacancies may be earmarked for being filled up from dependants of deceased employees (Spouse/son/unmarried daughter) subject to their meeting the job specifications and consideration for suitability. If number of vacancies sanctioned are so low that it is difficult to adopt above criteria for reserving vacancies, decision in this regard may be taken by the Unit In-charge. In addition this consideration is available provided none of the children or the spouse of such employees is already employed in Govt./Semi Govt./Autonomous Body/PSU/Organisations listed on Stock Exchange.

ii) Age relaxation may be allowed as under:

a) Employees dying due to accident "during the course of" and "arising out of employment" on merits of each case.

b) In other cases - Age relaxation up to a maximum of 5 years.

iii) The reservation for various categories like SC/ST/OBC etc. may be worked out for the total number of vacancies sanctioned and accordingly filled up. However, it should be an endeavor to fill up vacancies kept reserved for dependents of the deceased employees, to the extent possible, from such candidates on prorata basis.

iv) A separate written test may be conducted for dependents of deceased employees in case written examination is being conducted for remaining vacancies also.

v) A separate panel may be prepared for dependents of deceased employees.

From the above discussion, the following points emerge:

i) the petitioners have been working continuously for about three decades in the respondent company;

ii) Either of the parents of the petitioners, being the employees of the respondent company, died in harness; and

iii) the respondent company has a policy of compassionate appointment even prior to the entry of the petitioners in the company.

The privity:

23. It may be recalled that the principal contention of the learned Standing Counsel is that the petitioners did not file any proof before the Court that their initial appointment was under the category of compassionate appointment; and as such, it shall be concluded that the petitioners have been engaged by the society in the respondent company without any privity of contract, much less a relationship of employer and employee between the respondent company and the petitioners. This contention, though appears attractive in the first blush, on deeper consideration, I am afraid, is required to be rejected. Once it is accepted that either of the petitioners' parents died in harness and that there was a definite scheme in existence to provide succour to the immediate dependent members of the family, no dependent would have volunteered to have employment on a tenure basis, especially as a contract labourer, through an intermediary - whatever the name it is called with. The aspect of there being an income generating member in the family of the deceased workman stands entirely on a different footing, for it is not the case of the respondent company that the petitioners' cases were rejected on that ground.

The Society:

24. In this case, heavy stress has been laid by the learned Standing Counsel on the aspect that the society is an independent entity and that it has engaged the

services of the petitioner in the respondent company. It has also been stated that it was a device adopted by the workmen themselves not to be exploited and that as a matter of welfare policy, the company too has lent its support to the said workmen in establishing the said society by nominating its own staff as some of the directors so that the workmen could effectively manage the affairs of the society, but still leaving the control of the society to the workmen themselves. There is not much dispute that the society is perhaps controlled by its own members, since evidently, out of nine directors, five are elected by the members and four are nominated by the company. Despite the fact that the secretary of the society is nominated by the company, I feel it appropriate not to indulge in any elaborate discussion on the said issue as it would not be required to determine in the first place the real status of the society and the consequences flowing therefrom.

Res judicata:

25. In the same breath, what is required to be answered is the impact of earlier writ proceedings initiated by the Society. A perusal of the order of this Court, dated 15.12.2010, in W.P. No. 26349 of 2000 reveals that the said writ petition was filed seeking regularisation of the services of the members of the petitioner society, since they have been working continuously for the last 15 to 20 years, discharging the same duties on a par with the regular employees. In fact, the society has never espoused the cause of the dependent children of the deceased employees and the application of the policy of compassionate appointment has not fallen for consideration. As such, the outcome of the said writ petition, in my considered view, does not have any impact on the present proceedings, which are entirely on a different cause, to wit: demand for regularisation on having been recruited under a specific scheme - compassionate appointment.

26. The learned Standing Counsel would submit that in both the writ petitions - in W.P. No. 26349 of 2000 and the present one - the prayers are identical and that in view of dismissal or refusal of relief in the earlier writ petition, the present writ petition is barred by res judicata. On this issue, it may be observed that a prayer cannot be read in isolation and it has to be read in juxtaposition with the pleadings filed in support of the said prayer. From a plain reading of the pleadings in the writ affidavit, it is very evident that although it is the singular contention of the petitioners that they were initially appointed, or at least taken into service, by the respondent company, as being the dependent children of the workmen who died in harness, under the smoke screen of the society, though. Thus, the contention of the learned Standing Counsel that the prayers in both the writ petitions are identical and that the present writ petition cannot be entertained, I am afraid, cannot be sustained.

Non-traversed & admission:

27. Initially, in the first counter affidavit filed, the respondent company flatly denied the existence of the workmen whose names were mentioned in the writ

affidavit as having been given a preferential treatment of regularisation despite their appointment under compassionate grounds. When the petitioners filed reply affidavit setting out the details of those eight persons with corrected staff members, the company did admit their existence in the rejoinder filed in response to the said reply affidavit. The company, however, has stated that those employees have been appointed "as per the recruitment rules as applicable at that time". Regrettably, the company has not chosen to file more information on this count. Stating that those people have been appointed as per the recruitment rules as applicable at that time does not, in my view, amount to any specific denial that they have been appointed under the category of compassionate appointment, for the simple reason that even such an appointment would be as per the recruitment rules as applicable at that time.

28. It is axiomatic that what has not been specifically denied by way of traversal amounts to admission on the part of the adversary. Accordingly, it can be safely concluded that the respondent company appointed those people under the category of compassionate appointment and later had their services regularised, but the same benefit was denied to the petitioners.

Contract Labour & Principal Employer:

29. In the light of the above submission, it is appropriate to examine the authorities relied on by both the learned counsel. To begin with, the learned Standing Counsel has placed reliance on a decision of the Hon'ble Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . In a very exhaustive judgment, the constitutional Bench of the Hon'ble Supreme Court has discussed the scope of the Contract Labour Regulation Act, 1970. The principal question that arose for consideration in the said judgment was whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification was implied in Section 10 of the CLRA Act. The other issue addressed was whether in the event of a contractor engaging contract labour in connection with the work entrusted to him by the principal employer, the relationship of master and servant between the principal employer and the contract labour emerges. In that process, their Lordships have defined "Contract Labour" in the following terms.

By definition the term "contract labour" is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master-and-servant relationship

between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai case and in Indian Petrochemicals Corpn. Etc.,; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour.

30. Having, thus, defined the term "Contract Labour", the Constitutional Bench has spelt out the circumstances under which contract labour could be treated as direct workmen of the principal employer:

(i) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, and

(ii) where the discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed of the services of a contractor and the court held that the contract labour would indeed be the employees of the principal employer.

31. Their Lordships have also enlisted the conclusions that would follow on issuing a notification u/s 10(1) of the CLRA Act, and they are stated to be as follows:

(1) contract labour working in the establishment concerned at the time of issue of notification will cease to function;

(2) the contract of principal employer with the contractor in regard to the contract labour comes to an end;

(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(4) the contract labour is not rendered unemployed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;

(5) the contractor can utilise the services of the contract labour in any other establishments in respect of which no notification u/s 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

(6) if a contractor intends to retrench his contract labour, he can do so only in

conformity with the provisions of the ID Act.

32. In the present writ petition, the issue of contract labour does not fall for consideration. Though incidentally the learned counsel for the petitioners has raised the plea that continuing the petitioners for years on end without regularising their services would also infringe the provisions of the CLRA Act, the entire controversy revolves around the issue of compassionate appointment, and the consequential regularisation thereof, as has been found by this Court initially.

Compassionate Appointment:

33. Now referring to the authorities relied on by the petitioners, it is profitable to appreciate the ratio laid down in *Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others*, . The Hon'ble Supreme Court has held that, while considering a claim for employment on compassionate grounds, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way or largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

34. It is too well stated to be called in question at this hour of the day that the compassionate appointments are not matters of course or of right but are subject to the precondition of a scheme being in place as a matter of policy. Further, it is not a substantive right to be claimed by the dependents of the deceased employees, who died in harness. It is only a socio-economic beneficial gesture on the part of the employers to provide immediate succour to the dependent members of the family of the deceased workman. In other words, as a mark of recognition of the services of the deceased employee, who, being the breadwinner for the family, having departed suddenly throwing the lives of his dependants in turmoil and penury, thus giving rise to both social and economic issues microcosmically, the policy has been put on place. Indeed, the respondent

company too has a specific policy with preconditions attached to it. The petitioners, of course, cannot claim as a right that either they should be appointed straight away to a substantive post or that their services be regularised without further consideration, simply on the premise that their parents died in harness in the service of the respondent company. Such an approach cannot be sustained. In any event, without fear of contradiction, it could be stated that at no point of time had the cases of the petitioners been rejected by the company on the ground that there had been other earning members in their families.

35. At the cost of repetition it may have to be stated that initial entry of the petitioners" way back in the year 1985-1986 was under the circumstances of their parents dying in harness. While a specific scheme of providing alternative employment to the dependent members was in existence, it cannot be assumed that their entry could have been only as contract labourers through an intermediary, a society. Having said that, it is appropriate to appreciate the ratio laid down in Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, that the compassionate appointment is required to be provided subject to the conditions that have been attached to the said policy. In fact, it is not the case of the respondent company that the petitioners" cases were rejected at the threshold since they did not meet the requirement. Indeed, there is an element of controversy about the claim of the petitioners whether they had their initial entry into the service as skilled or unskilled labourers. On this count, the learned counsel for the petitioner has submitted that though they had their initial entry as unskilled labourers, subsequently, they have acquired qualifications which would entail them to be regularised in the post of skilled labourers. In the alternative, the learned counsel has also submitted that in the light of their past service for about three decades, they should be regularised in the posts they have presently been placed.

Discrimination:

36. In Visakhapatnam Port Trust and The Chief Engineer (Personnel Dept.), Visakhapatnam Port Trust Vs. Sanapala Govindu and Others, , a learned Division Bench of this Court held at para No. 15 as under:

However taking into consideration the admission made in the counter-affidavit filed on behalf of the first appellant to the effect that a master list is being maintained in the matter of providing employment on compassionate grounds and certain rules have been prescribed therefore, we do hereby direct the appellants to consider the cases of all or any of the respondents for compassionate appointment in the event when their turn comes and on their satisfying the eligibility criteria prescribed by the first appellant Visakhapatnam Port Trust.

37. In the present case too, the respondents, in the face of non-denial thereof, have been maintaining three lists, namely: list of dependents of the deceased

employees of BHEL; list of dependents of the deceased employees appointed in BHEL; and the list of dependents of the deceased employees of BHEL working in BHEL Labour Contract Co-op., Society Ltd. All these three lists have been filed by the officials of the respondent company.

38. The contention of the learned counsel for the petitioners gets bolstered from the 3rd list, where the names of the petitioners have been reflected as being the dependents of the deceased employees of the respondent company. Further, the 2nd list reflects the names of the persons, whose services have been regularised under the category of compassionate appointments as has been urged by the petitioners all through. In the light of the very records emanating from the respondents, whose veracity has not been denied or doubted, it is difficult to discern the reason why only the services of a few of them have been regularised, while leaving out the others, especially the petitioners, to bear the brand of contract labourers. It could be seen that those persons, who are said to have been similarly placed along with the petitioners, had their entry more or less at the same time or even subsequently. Accordingly, I am constrained to hold that the action of the respondents in not considering the case of the petitioners for regularisation is discriminatory.

Ratio & Relief:

39. Though the learned counsel for the petitioners has placed reliance on Food Corporation of India and Others Vs. F.C.I. Paribahan Thikadhari Karamachari Samity and Others, , it is the case where the High Court has considered the cases of the petitioners therein on purely sympathetic grounds and that was refused to be interfered with by the Hon"ble Supreme Court under the facts and circumstances of the case. As such, it does not lay down any ratio and is thus not required to be relied upon to examine the present issue that has fallen for consideration. It is axiomatic that the ratio of a decision does not depend on the relief granted in the said lis, for most of the landmark judgments that have shaped our constitutional jurisprudence, such as Kesavananada Bharathi, Maneka Gandhi, had no relief for the petitioners therein, a touch of irony, though.

Alternative Plea:

40. The learned counsel has also placed reliance on another judgment of the Hon"ble Supreme Court in R.K. Panda and Others Vs. Steel Authority of India and Others, , which is to the effect that the Parliament has recognised Contract Labour and has not purported to abolish it, and that labourers initial appointment through contractors and continuously working with Steel Authority of India at its plant for the last ten years are required to be absorbed as regular employees.

41. The alternative plea of the petitioners is that even they have put in more than the requisite statutory period of 240 days and that their services have to be regularised for the aforesaid reasons. This proposition is not required to be considered since the claim of the petitioners, in the considered view of this Court, is to be sustained on the ground that their services have not been regularised,

despite their entry into service under compassionate grounds.

Result:

42. In the result, the present writ petition is allowed with a direction to the respondent company to regularise the services of the petitioners under the category of compassionate appointment, with all attendant benefits of service by taking into account the other parameters as to their suitability. It can be seen from the record that already the petitioners are in their fifties and have not been left with much service. As such, the process of regularisation may be completed as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No order as to costs.

43. As a sequel, the miscellaneous petitions, if any, pending in this writ petition shall stand closed.