

(2001) 10 DEL CK 0079

In the Delhi High Court

Case No : C.Ms. 9667 of 2000 and 10285, 11329 and 10649 of 2001 in C.W.
5980 and 6341 of 2000 and 6183 of 2001

Ashok Kumar Sharma and Others

APPELLANT

Vs

Delhi Vidyut Board
 Anil Kumar and Others Vs Delhi
Vidyut Board

RESPONDENT

Date of Decision : 29-10-2001

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2002) 96 DLT 95 : (2002) 63 DRJ 191

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Indra Jaisingh, Vipin Sanghi and R.K. Saini, for the Appellant; V.K. Shali, for the Respondent

Judgement

Vikramajit Sen, J.—The Petitioners in these writ petitions have been engaged by the Delhi Vidyut Board (for short "DVB") on contract basis for a period of six months in a year. It is their case that there is a perennial need for the services of persons such as them. It is further their case that their services have been engaged after they were successful in the Test and Interview duly conducted by the Delhi Vidyut Board. Since the DVB has taken the plea that regular appointments can be made only through the recommendations of the Delhi Subordinate Service Selection Board (for short "DSSSB") they are all willing to again appear in the fresh selection process as and when carried out by this body. It is emphasised on behalf of the Petitioners that they are receiving a consolidated salary of Rs. 5500/- and because of the meagerness of this amount when compared with salaries payable to regular employees, the DVB has found it convenient to meet its staff requirement through this "cheep labour". Indubitably, there cannot to be two opinions that the State is expected to be the paragon of a model employer and the upholder of the Directive Principles including the doctrine of equal pay for equal work. The State is also to manifestly

eschew unfair labour practices. The conduct of the DVB in these petitions belies these expectations.

2. Learned counsel for the Respondent DVB have relied on the Orders of the Hon"ble Division Bench passed on 7.1.2000 in LPA 6/2000 entitled Neeraj Kumar v. Delhi Vidyut Board. The Learned Single Judge had declined protection/extension of their services after the efflux of their contractual engagements. Counsel for the DVB shall not appoint any person as Electrical Inspectors on contractual basis and it was because of this statement that the Appeal was dismissed. But subsequent experience has shown that the DVB has not adhered to this statement and persons including the Petitioners have been engaged, year after year, on contract basis. On the first hearing of C.W. 6341/2000 "Rule" had been issued by Hon"ble Madan B. Lokur, J. and notice on the stay application had been ordered returnable for 29.11.2000, but in the interregnum the services of some of the Petitioners in this batch of petitions were dispensed with "in compliance with the undertaking given by the Respondents on 7th January, 2000 before a Division Bench in LPA 6 of 2000." Learned counsel for the Respondent have stated during the course of the arguments that in the event that the DVB again requires staff as Electrical Inspectors it will engage the services of the Petitioners on a contractual basis once again.

3. On behalf of Petitioners it has been contended by Ms. Indira Jaisingh, Learned Senior Counsel for the Petitioners that at present it is only interim protection that is prayed for. She does not press or urge that the prayer for regular absorption of the Petitioners should be ordered. From the judgment of the Hon"ble Supreme Court in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, reliance has been placed on following passages:-

"17.Where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption.

18.

19.In the present case, all the respondent workmen are eligible for absorption subject to any eligible qualification under the rule, if any. The recruitment rules show that they did have the posts in question in their ambit yet no posts were created. It was not expected from the institutions like the present appellant, especially when it is fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the

appellant but the State who is funding it, then why to do it only after court's intervention. It is true, creation of posts does involve financial implication. Hence financial health of a particular institution plays an important role which courts also keep in mind. The court does exercise its restraint where facts are such where extent of creation of posts create financial disability. But this does not give largess to an institution to engage larger number of daily-wage workers for a long number of years without absorbing them or creating posts, which constitutes an unfair labour practice."

4. Ms. Jaisingh has also placed reliance on the fact that the services of the Petitioners were engaged each year, albeit on contract basis and for six months only, as stands admitted in the Counter Affidavit in which it has been stated that "only such of the Electrical Supervisors who had earlier worked on contract basis were appointed as such and their terms of appointment were for a specific period of six months and has lapsed after the expiry of the period." It has also been contended that the DVB had adopted the devious device of staggering and interrupting the engagement for six months at a time, on contract basis, of the persons such as the Petitioners, so that in actual fact services of such contract employees were available to the DVB throughout the year. Attention has also been drawn to the Respondent's letter dated May 1999 on the subject of contractual appointments to meet exigencies in which it was mentioned, *inter alia*, as follows:

"Process of direct recruitment and selection on deputation usually take a lot of time on the number of posts are notified, applications are invited, processed, written examinations held, interview conducted and thereafter the panels are finalised. The nature of work in D.V.B., is such that for peak seasons, both winter and particularly summer to meet urgent requirements of operation and maintenance, and transmission and distribution staff are required, particularly on the technical side."

5. It has been explained that, as is evident from the Minutes of the Meeting held on 24.8.2001, the services of the Petitioners were engaged after their having succeeded in the examinations and interviews conducted by the DVB itself, instead of the DSSSB. Ms. Jaisingh has drawn attention to an Affidavit filed by the DVB in November 1999 to the following effect:

"G) That now the system has been streamlined, the defects in the sub-stations have been modified and system has been improved with the new installations/ augmentation etc. The DVB can now manage its supply with the help of existing strength of technical staff including inspectors. As such DVB, at this stage, does not want to continue with the contract staff any more. As submitted in earlier paragraph, the total sanctioned strength of Inspectors (E) in DVB is 749 out of which 673 posts are filled up on regular basis. 76 posts of 80% quota of direct recruitment is lying vacant for which, for regular recruitment the matter has already been referred to the Delhi Subordinate Staff Selection Board who has initiated the process of selection and examination for these posts has conducted

on 14th November, 1999.

H) That the Delhi Subordinate Staff Selection Board has conducted the examination on 14th November, 1999 and soon a list of the selected Inspectors (E) will be made available in DVB.

I) That there being no requirement at present to continue with the electrical supervisors, the services of electrical supervisors are no more required after contractual period of six months. DVB is not going to hire any inspector/electrical supervisor on contract/ad hoc/daily wage basis as now DVB can manage its affairs with the existing staff."

6. The contention is that these submissions have been made in a mala fide manner in order to mislead the Court and that on the contrary there is a continuing and perennial need for engaging the services of the Petitioners. It has also been contended that in consecutive meetings held by the Chairman of the DVB, the shortage of technical staff has been recognized and a decision has been taken to extend the tenure of the Junior Engineers working on contract basis. The position obtaining in 1998, when the initial engagement of the Petitioners was carried out, is evident from the following paragraphs of the Counter Affidavit filed in November 1999.

"B) That in order to meet the peak summer seasonal demand initially 290 posts of inspectors were advertised by the DVB in the month of April/May, 1998. These 290 posts were over and above the sanctioned strength in anticipation that the competent authority will grant sanction for the creation of the same. However, seeing the financial implications and other technicalities involved, the competent authority did not sanction these posts and as a result thereafter vide another advertisement dated 30th May, 1998 in The Hindustan Times a corrigendum was issued cancelling the advertisement for the post of Inspectors.

C) That thereafter, in order to maintain uninterrupted supply of electricity, it was decided that 150 persons may be engaged as Electrical Inspectors/Supervisors on contract basis for a period of six months on a consolidated fixed amount of Rs. 5500/- per month. This decision was taken by the Board on 2nd September, 1998 and as such the advertisement was issued on 4th September, 1998 calling applications for appointment as Electrical Inspectors on contract basis. As against 150 persons 117 joined on contract basis.

7. In fact learned counsel for the Respondent had asserted in the course of hearings that there is a daily increase in the demand for electricity and if this be so there would be a constant escalation in the number of employees required by the DVB. Learned counsel for the Respondent had also handed over a copy of the decision rendered in C.W. No. 5930 of 1999 - entitled Amit Yadav and Ors. v. Delhi Vidyut Board by Hon"ble N.G. Nandi, J. However, a perusal of this judgment shows that the main contention was that of regularisation and not of interim protection to the services of the Petitioners. In this context Ms. Jaisingh has reiterated that as and when the DSSSB initiates and undertakes its

recruitment process all the Petitioners would be more than willing to participate in it.

8. The critical and polemical question at this stage of the writ petition is, Therefore, whether the DVB has adopted and pursued an unfair labour practice in meeting its personnel needs by engaging employees on contract basis although there is palpably a pressing and perennial need for their retention on a regular basis. The experience over the last three years is indicative of the fact that the services of the Petitioners are definitely required each year for varying periods but of a minimum of six months and that more than fifty per cent of the entire workforce of contractual Electrical Inspectors such as the petitioners can be absorbed because of the DVB's requirements. Assuming that it is an unfair labour practice, the consideration flowing there from is whether the extraordinary writ jurisdiction of the High Court or that of the industrial adjudicator under the Industrial Disputes Act is the appropriate forum for the ventilation of these grievances and claims.

9. The Court would invariably be anxious that if the DVB is directed to continue the services of the Petitioners even after the expiry of this contract period, the DVB would be exposed to an additional financial burden. Keeping in perspective the prevailing practice of large scale employment of persons by politicians to increase their respective vote banks, I find it unfair for the Court to look away from the rights created in the favor of such employees because of pecuniary implications of the Authority concerned. It is for the Authority to put its house in order. It is the admitted case of the parties that the Petitioners have been engaged for a minimum period of six months in each year. Therefore, sufficiently large number of persons other than the Petitioners must also have been engaged on contract basis, and these persons being similarly placed, it would be inequitable and unjust if their services are put in jeopardy because of an interim relief granted to the Petitioners.

10. In order to sustain the writ petition itself, the Petitioners must be possessed of a legal right which they apprehend has been or is likely to be violated, before any of the high prerogative writs can appropriately be issued in their succour. It is now very firmly entrenched in service jurisprudence that even where persons are placed in a Selected List, no indefensible right to employment is created in their favor. Furthermore, in the context of the question of their rights attention should be drawn to the judgments of four single Benches of this Court in Tarlok Chand and Others Vs. National Industrial Development Corporation Ltd. and Others, , Pushpa Gupta Vs. Chairman and Managing Director, Engineers India Ltd. and Another, , D.P. Singh v. Engineering Projects (India) Limited, 1995 I AD (Delhi) 478 and Chet Ram Vs. Union of India, . In all these cases it has been held that jurisdiction under Article 226 should not be exercised since the Petitioners have adequate remedy under the Industrial Disputes Act. Full Benches of the Patna and Allahabad High Courts have in Dinesh Prasad and Ors. v. State of Bihar and Ors., 1985 LAB. I.C. 287 and in Chandrama Singh v. Managing

Director, U.P. Cooperative Union, Lucknow and Ors., 1991 LAB. I.C. 2413 respectively, made similar pronouncements.

11. In R.K. Panda and Others Vs. Steel Authority of India and Others, , a three Judge Bench observed as follows:

"It is true that with the passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke-screen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. 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 affidavits. It need not be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. 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 produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. The Constitution Bench of the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., decided on August 30, 2001 has recently opined that in the judgment they "have used the expression "industrial adjudicator" by design as determination of the question aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by the High Court in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into these issues will be Industrial Tribunal/court whose determination will be amenable to judicial review."

13. Finally it will be proper to focus attention on the fact that, in the case heavily relied upon by the Ms. Jaisingh, namely, Gujarat Agricultural University's case (supra) the matter had commenced u/s 10(1)(c) of the Industrial Disputes Act, 1947, and the Terms of Reference appear to read as follows:- "Whether the employees listed in the schedule annexed, be made permanent as from the day when they complete 240 days service, and if in affirmative, whether they are entitled to all the benefits at par with the permanent employees and be paid

arrears." In the present petitions, however, the "industrial adjudicator" has been completely ignored, even though it can punish the Respondent in the event that it comes to the conclusion that an unfair labour practice has occurred.

14. In these circumstances despite the views expressed earlier, it would not be proper to grant interim relief since prima facie the petition appears not to be maintainable. The rejection of the application on the grounds of the availability of alternate and effectual remedy shall not in any manner affect the decision of the Labour Tribunal/Court if its jurisdiction is invoked. The DVB would be well-advised if it immediately reviews its policy viz-a-viz the employment of the Petitioners since there appears to be substance in the argument that unfair labour practice has been carried out by the DVB, and the observations of the Hon"ble Supreme Court in Gujarat Agricultural University's case (supra) extracted above are particularly apposite. Interim reliefs declined. Applications are disposed off.