

(2016) 03 KAR CK 0215

In the Karnataka High Court

Case No : Writ Petition Nos. 101732-938 of 2015 [S-RES]

Gopal Simpi and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, Section 10(1),
Section 2(e)

Citation : (2016) 03 KAR CK 0215

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Ramachandra Reddy, Advocate for J. Prashanth and Gangadhar J.M.,
Advocates, for the Appellant; Shivaprabhu S. Hiremath, AGA, for the Respondent

Final Decision : Disposed off

Judgement

B.S. Patil, J.—1. All these petitioners claim to be working under the Karnataka Power Transmission Corporation Limited (for short KPTCL) coming in Hubli and Belagavi Circles. They have been discharging their duties attached to the posts of Shift Junior Engineers, Assistant Engineers, Shift operators and Shift Helpers. They claim to have put in service ranging from two to fourteen years in various Substations. In all these Sub-stations, the Management has engaged services of contract labourers. Admittedly, Management has engaged the services of contract labourers through Notification issued by KPTCL for arranging shift duties and maintenance work at 220 KV Sub-stations. The tenders, it is alleged, were invited from Class-I and licensed reputed contractors for supply of labourers.

2. Petitioners claim that they have been working under the Labour Contractors. They have been demanding abolition of contract labour and regularisation of their services by forming an Association. Representations given by the Association to the respondents have been produced as Annexure "E" series. They claim that nature, quality and quantity of work carried out by them compared to

regularly appointed employees in the services of HESCOM Division were all same, but in the matter of payment of salary, there was lot of difference and discrimination. It is asserted by them that they have been forced to work with the contractor as contract labourers though there was hardly any difference between them and regularly appointed employees of respondent Corporation.

3. They have further urged that similarly placed contract employees who were working under the Mangalore Division had approached this Court by filing Writ petition Nos. 1108-1155 of 1999 seeking a direction to respondents to initiate appropriate action under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, (for short CLRA Act") for abolition of contract labour. The High Court vide order dated 15th February 1999 directed the respondents to consider the case of the petitioners therein. Another batch of writ petitions in W.P. Nos. 20678-710 of 1998 seeking abolition of contract labour under the provisions of Section 10 of CLRA Act, was also filed. The said writ petitions were also disposed of on 05th July 1998, directing the respondents therein to take a decision within four weeks. In spite of such orders, including the order passed in Writ Appeal No. 6084 of 2002, disposed of on 12th April 2005, no action was taken for abolition of contract labour in respect of the petitioners herein and to absorb their services. In this background, petitioners have urged that action of respondent/authorities did amount to continued exploitation of petitioners through labour contractors, thereby violating their rights guaranteed under Article 14 of the Constitution of India.

4. In this background, petitioners have sought for a writ of mandamus directing the respondents to consider the matter and issue a notification abolishing contract labour in respect of Sub-stations where petitioners have been working as contract labourers and for a further direction to extend all consequential benefits, including the benefit of regularisation.

5. Petitioners have also sought for a direction to respondents to consider their representations vide Annexures "E1" to "E10" in the light of orders passed by this Court in Writ petition Nos. 27826-897 of 2001 disposed of on 21st October 2002, Writ Appeal No. 6084 of 2002 disposed of on 12th April 2005 and Writ Petition No. 35681-927 of 2003 disposed of on 12th April 2005.

6. KPTCL-the 2nd Respondent and respondents 3 to 5 have filed joint statement of objections contending inter alia that Writ Petitions were not maintainable as there was no relationship of employer and employees between the KPTCL and petitioners; admittedly, petitioners were directly engaged by different independent contract agencies. Hence, there was no relationship of employer and employees; as the independent contractors were not made parties, relief sought in the writ petitions cannot be granted; no direction for regularisation could be issued as they were not engaged by the Corporation but were employed by independent contract agency; in terms of the Regulations framed by respondent Corporation called Recruitment and Promotion Regulations, specific procedure has been provided for recruitment to various posts and Corporation cannot make

appointments by regularising contract workers in violation of such Rules which have statutory force.

7. Respondents have further contended that representations submitted vide Annexures "E1" to "E10" cannot be considered inasmuch as issuance of Notification abolishing contract labour in respect of Sub-stations where petitioners were working as contract labourers, has to be considered by the Government under Section 10 of the CLRA Act and petitioners had to approach the State Government in that regard.

8. It is urged by them that all the petitioners were direct employees of contract agencies; their work was directly supervised by contract agencies; their wages were paid by them; right to terminate their services was with the contract agencies and the respondent Corporation had no control in their engagement, nature of work carried out and in terminating their services.

9. The Respondents have made a grievance about continuance of these employees by virtue of the interim order granted in these petitions. They have also contended that provisions of CLRA Act apply to an establishment in which twenty or more persons were employed on any day of the preceding twelve months as contract labourers, whereas in each Substation only about eight contract labourers were working on rotation basis in three shifts and each Substation being an independent establishment, as defined under Section 2(e) of the CLRA Act, provisions of the CLRA Act was not applicable to the Substations hence, question of invoking Section 10(1) of the CLRA Act would not arise. It is further urged that even if the contract labour was abolished, question of regularising their services would not arise, as the Management was required to make permanent arrangement for appointing regular workmen in accordance with their Recruitment Rules.

10. I have heard the learned counsel appearing for the petitioners--Sri. Ramachandra Reddy and the learned Senior Counsel, who has appeared for the KPTCL and its officers--Sri. Sajan Poovaiah and the counsel for the respondent HESCOM.

11. Sri. Ramachandra Reddy has placed strong reliance on the judgment of STEEL AUTHORITY OF INDIA LIMITED AND OTHERS v. NATIONAL UNION WATERFRONT WORKERS AND OTHERS, , (2001) 7 SCC 1, to contend that where contract labourer engaged in or in connection with the work of an establishment was prohibited by issuance of Notification, no automatic absorption of the contract labour working in the establishment would be ordered, but where the contract was found to be sham, nominal one, as a camouflage, the contract labourers working with principal employer would be treated as employees of principal employer himself. He has also pointed out, referring to the STEEL AUTHORITY OF INDIA case, that once Notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour was issued and where the contract was found to be genuine, and principal employer intended to employ

regular workmen in the work of the establishment, he shall give preference to erstwhile contract labourers if otherwise found suitable and, if necessary, by relaxing conditions as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing condition regarding academic qualifications other than technical qualifications.

12. It has to be noticed here that, in STEEL AUTHORITY OF INDIA case, the Apex Court has observed in paragraph 126 that for determining the questions raised by contract labourer in regard to conditions of service, on issuance of prohibition notification under Section 10(1) of the CLRA Act, the industrial adjudicator would be the appropriate authority to decide the question as to whether the contract was a genuine contract or a mere camouflage, etc., and such disputed facts could not be decided by the High Court in exercise of jurisdiction under Article 226 of Constitution of India.

13. Indeed in the instant case, no case is made out by the petitioners stating that their appointment through the independent contract agency was a camouflage and that they were indeed employees of KPTCL or that the contract itself was not genuine and therefore, they have to be treated as employees of the principal employer. In such circumstances, as rightly contended by Sri. Sajan Poovaiah, learned Senior Counsel for respondents, question of issuing any direction to regularise the contract labourers and absorb them as employees of KPTCL or HESCOM would not at all arise. Therefore, the decision in STEEL AUTHORITY OF INDIA Case will not help the petitioners to claim regularisation in the services of respondent/Corporation.

14. Coming to the question raised by the learned Senior Counsel Sri. Poovaiah, urging that in view of the judgment rendered by the Apex Court in the case of SECRETARY, STATE OF KARNATAKA & OTHERS v. UMADEVI (3) & OTHERS, , (2006) 4 SCC 1, the services of petitioners cannot be regularised having regard to the various principles laid down therein, it has to be noticed that Sri. Ramachandra Reddy, counsel for the petitioners, inviting the attention of Court to the judgments in OIL AND NATURAL GAS CORPORATION LIMITED v. PETROLEUM COAL LABOUR UNION AND OTHERS , (2015) 6 SCC 494, and AJAYPAL SINGH v. HARYANA WAREHOUSING CORPORATION, , (2015) 6 SCC 321, urges that provisions of Industrial Disputes Act and powers of Industrial Tribunals and Labour Courts provided therein were not at all under consideration in UMADEVI's Case and that the issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in UMADEVI's case and hence, the said judgments had no application to the case.

15. It has to be noticed here that in ONGC Case (supra), after the abolition of contract labour by the Central Government during 1976, the workmen concerned were appointed directly by the Management for a temporary period and their appointments were continued thereafter and in that background, their claim for regularisation in the service of the Corporation as per the provisions of Certified

Standing Orders on their completion of 240 days of service in a calendar year arose for consideration. In that context, the Apex Court held that the workmen concerned could not be denied their legitimate right to be regularised in their posts in terms of Certified Standing Orders and that it would be unjust and unfair to deny them regularisation for the error committed by the Corporation in the matter of procedure adopted in appointing them to the post. Similarly, facts involved in AJAYPAL SINGH's Case and in the recent judgment of UMRALA GRAM PANCHAYAT versus THE SECRETARY, MUNICIPAL EMPLOYEES UNION AND OTHERS, , 2015 AIR SCW 2240 are totally different.

16. Facts in the present case are totally different. Admittedly, the employees are not engaged by the Corporation. Therefore, question of considering the claim for regularisation of petitioners in the employment of the Corporation does not arise, because they are not the employees of the Corporation.

17. During the course of arguments, KPTCL has placed before the Court for perusal along with a memo, a Notification issued by the State Government on 07th February 2011 whereunder, considering the directions issued by this Court in Writ Petition No. 34000 of 2009 disposed of on 23rd April 2010, directing the State Government to consider the representations submitted by the KPTCL/ ESCOM Limited Workers Welfare Association (R) seeking abolition of contract labour in terms of Section 10 of the CLRA Act, the State, after considering the entire matter on the basis of recommendations made by the State Contract Labour Advisory Board for abolition of contract labour system in Karnataka Electricity Board in its stations/sub-stations/Units in Mangalore, Udupi Circles, has issued notification abolishing contract labour in KPTCL/ESCOM Sub-stations in respect of Shift Engineers/Operators with immediate effect.

18. It is, thus, evident that in respect of Shift Engineers/Operators, Contract Labour has been already abolished in KPTCL/ESCOM Sub-stations. Some of the petitioners are working as Shift Operators. For instance, petitioner Nos. 7, 8, 10, 11, 13, 15, 19, 21, 23, 24, 25, 27, 28, 29, 30, 32, 34, 35, are working as Shift Operators. Similarly, several petitioners have been working as Operators and some are working as Helpers. If the notification issued on 07th February 2011 applies to Shift Operators or even Operators, many of whom are petitioners in the present batch of writ petitions, then there is no need to consider their case for abolition of contract labour. But, as regards the Helpers, who have also approached this Court in the present batch of writ petitions, Notification dated 07th February 2011 does not make any mention and may not, therefore, be applicable to them. In such circumstances, it is only appropriate that a direction has to be issued to the Government, which has been arrayed as party-respondent No. 6 in these writ petitions, to consider the representations of Helpers in the present batch of writ petitions, seeking abolition of contract labour in terms of the provision contained under Section 10 of the CLRA Act, as expeditiously as possible.

19. The order dated 21st October 2002 passed in Writ Petition No. 27826-897 of

2001[L-RES] in the case of B. JAYAKAR AND OTHERS v. STATE OF KARNATAKA AND OTHERS, to which the Management of KPTCL is a party-respondent No. 3, has been relied upon by the petitioners, wherein dealing with the grievance made by contract labourers in each Substations coming under the jurisdiction of Mangalore Circle of KPTCL, this Court referring to the provisions contained in Section 10 of the CLRA Act and the judgment of the Supreme Court in STEEL AUTHORITY OF INDIA case has directed the State Government to reconsider the representations filed by petitioners therein (similarly placed employees) seeking abolition of contract labour expeditiously, at any rate within four months. It is urged that in the said decision, until consideration of the request of the petitioners therein, KPTCL was restrained from dispensing with their services.

20. As already observed above, pursuant to the directions issued in those writ petitions, contract labour has already been abolished. Indeed, Notification dated 07th February 2011 has been issued by the State Government based on the recommendation made by the State Contract Labour Advisory Board, in exercise of its powers under Section 10(1) of the CLRA Act, abolishing contract labour in KPTCL/ESCOM Sub-stations in connection with Shift Engineers/Operators. This Notification has been produced along with memo dated 08th January 2016. Therefore, the relief sought by many of the petitioners who are Shift Engineers/Operators, does not survive for consideration. Similarly, in respect of such of the petitioners who are working as Helpers, the State Government has to take a decision by considering their representation regarding abolition of contract labour.

21. Insofar as question of regularisation of their services in the Corporation is concerned, such a direction cannot be issued, as these employees have not been engaged by the Corporation or the ESCOM. The judgment in UMADEVI's case - , (2006) 4 SCC 1 clearly lays down in paragraphs 43, 47 and 55 that when a person employed is a contractual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature, as such, a legitimate expectation for being confirmed in the post could not be made; that adherence to the rule of equality in public employment is a basic feature of our Constitution; the Court would be disabled from passing an order upholding violation of Article 14 of the Constitution and it would not be open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment had come to an end or ad hoc employees who by the very nature of their appointment did not acquire any right; the High Courts under Article 226 of the Constitution of India should not ordinarily issue direction for absorption, regularisation or permanent continuance unless recruitment itself was made regularly and in terms of the Constitutional scheme.

22. The Apex Court has further observed in paragraph 43 that merely because an employee had continued under cover of an order of the Court which is described as "litigious employment", he would not be entitled to any right to be absorbed

or made permanent in the service and in such cases, High Court may not be justified in issuing interim directions.

23. In the light of this judgment of the Apex Court, no direction can be issued for regularisation, absorption or continuance of the petitioners. Petitioners have been continued in service due to interim order granted by this Court. The process of regular recruitment to fill up the post in KPTCL or ESCOM cannot be stalled.

24. However, one cannot lose sight of the hardship, which the petitioners may face if they are not provided an opportunity to participate in the recruitment process. Service of these petitioners has been provided through various contractors. Even the term and tenure of the contractor has stood extended automatically due to the interim orders passed restraining discontinuance of the services of the petitioners from different substations, which is also quite contrary to the requirement of inviting tenders and entrusting the task in a transparent way.

25. In such circumstances, if a direction is issued to the respondent-Corporation to provide opportunity to the petitioners to apply to the post, by making suitable provision for age relaxation depending on the number of years of service rendered by them, it would meet the ends of justice. Petitioners would be then entitled to take part in the recruitment process as per the Rules of the Corporation. Hence, these Writ Petitions are disposed of in the following terms:

"(i) The prayer for absorption or regularisation of the petitioners in the service of the Corporation is rejected;

(ii) The respondent-Corporation is directed to formulate a scheme providing relaxation in age with regard to the petitioners and provide them an opportunity in terms of the said Scheme and the Rules regulating recruitment to the posts in question to apply and participate in the process of selection and recruitment;

(iii) The Scheme to be framed regarding age relaxation shall take into account the length of service rendered by the petitioners in different posts for which they may be eligible to apply.

(iv) A direction is issued to the State Government to consider the representations of Helpers for abolition of contract labour as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this order."