
(2007) 03 AHC CK 0229
In the Allahabad High Court

Jhamman Lal and Others

APPELLANT

Vs

Bharat Sanchal Nigam Ltd. and Others

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 21, 26

Citation : (2007) 5 ADJ 473 : (2007) 6 AWC 6048

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—List has been revised. None has appeared for the petitioners to press this petition. Sri Subodh Kumar, counsel for the respondents is present. Heard him and perused the record.

2. The petitioners have come up in this writ petition with the prayer that the respondents may be directed to take work/services from them as Security Guards/Gunmen continuously as per the letter/directives dated 22.5.2006 issued by the office of the Director General (Punarvas) for a period of two years. It has further been prayed that the respondents may be directed to pay full salary to the petitioners as per the wage structure applicable to them month to month when it falls due and also to pay them the amount of E.P.F. and other emoluments.

3. The Director, Sainik Kalyan Evam Punarvas, Lucknow and the Director Resettlement, Central Zone Head Quarter Command, Lucknow are the authorities who monitor the entire management for reemployment such ex-army personnel, like the petitioners though contractors who are sponsored by them in the public undertakings owned and controlled by the Government.

4. It is stated that at the request of the Telecom District Manager (T.D.M.), Rampur, the Director General (Punarvas) sponsored a Security Agency i.e.

Colonel Securities, Agra for the purpose of providing security services to the Telecom Department at Rampur for a period of two years i.e. up to May, 2004. The petitioners had worked as Security Guards" /Gunmen.

5. It is further stated that the Director General (Punarvas) again sponsored a Security Agency i.e. Chowdhry Security and Detective Services, Delhi for a period of two years for providing security services at the same place i.e. in the office of T.D.M. Rampur in which also the petitioners had worked. The Joint Director on behalf of Director General (Punarvas) again sent a letter to the Divisional Engineer C/o T.D.M. Rampur inter alia, informing that the same Chowdhry Security and Detective Services have again sponsored for maintaining security at the office of T.D.M. Rampur and one Captain Rajesh Gulia was also appointed as an officer to manage the security arrangements at the premises. The petitioners are attached as Security Guards with the office of T.D.M. Rampur.

6. The petitioners are Ex-Army personnel who were working as Security Guards in the establishment of the BSNL at Rampur employed by the aforesaid contractor.

7. The main grievance of the petitioners are that contractor was depriving them from several benefits such as amount of E.P.F. and other emoluments for which they are entitled and was not paying them their full salary i.e. the Security Guards were being paid Rs. 2500/- instead of Rs. 5, 389/- per month and the Gunmen were being paid Rs. 3, 000/- per month instead of Rs. 6619/- per month. They made several representations to the contractor and also before the BSNL authorities concerned which have remained unactioned till date giving rise to this writ petition.

8. The counsel for the respondents submits that the petitioners have an alternative and efficacious remedy for redressal of their grievance before the Labour Court as the findings of facts are to be recorded by the Labour Court on basis of oral and documentary evidence which may be led by the parties before the Labour Court.

9. This argument of the respondents' counsel is not rebutted by the petitioners' counsel.

10. Admittedly the petitioners are working under the contractor and are contract workers. They are not employees of the BSNL. By means of this petition they want to enforce their contract of service with the BSNL for a period of two years even though they are employees of the contractor.

11. It appears from annexure-1 letter dated 22.5.2006 that duration of contract was of two years for re-sponsorship of the contractor Agency with the Director Employer (DGR) of the army. This contract between the Army and the Contractors has nothing to do with providing service to giving employment to the petitioners by BSNL. However, since the contractor supplies the Security Guards and Gunmen to BSNL under a contract, their relationship with the BSNL as

principal employer cannot be denied being governed by the statutory provisions under the Contract Labour (Regulation and Abolition Act), 1970.

12. Section 21(1) of the Act provides that a contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

13. Sub-Section (2) provides that every employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

14. Sub-Section (3) provides that it shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

15. Sub-Section (4) provides that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

16. Chapter VI of the Act provides penalties and procedure for contravention of provisions regarding employment of contract labour, including offences by companies and cognizance of offence for such contract.

17. Under the aforesaid provisions of the Act, it is the solemn duty of the contractor to see that the full wages are paid to its employees and it is also the duty of the principal employer to have certified the amount that it has been paid as wages in such matters. Since it is the statutory duty of the BSNL to ensure the disbursement of wages in the presence of the authorized representative of the principal employer, hence, the BSNL cannot be a mute spectator to the illegalities of less payment made to the contract employees. It is its duty as principal employer under the Act to ensure full payment of minimum salary which is payable to an employee of same category in their establishment otherwise the difference of salary is recoverable from them also.

18. However, as the question whether the petitioners have been paid their due salary or not and whether the immediate employer i.e. the contractor and the principal employer i.e. BSNL have fulfilled their statutory obligations under the Contract Labour (Regulation and Abolition) Act, 1970 and rules framed there under is to be determined on basis of oral and documentary evidence before a fact finding Tribunal. It is not feasible for the High Court to step into the shoes of a Tribunal and take oral and documentary evidence for deciding such controversy as in the present case.

19. The hierarchy of the Courts is to be maintained at all costs though the High

Court may in its opinion in exceptional circumstances take cognizance.

20. In the circumstances, I am of the opinion that the matter requires findings of facts as such it was open to the petitioners to have filed a complaint before the appropriate authority u/s 26 of the Contract Labour (Regulation and Abolition) Act, 1970 or get the dispute adjudicated from the Labour Court under the U.P. Industrial Disputers Act, 1947 or even file an application u/s 33C of the Act for computation of full wages or for payment of wages under any other Industrial law such as, Payment of Minimum Wages Act, in accordance with law.

21. It is the consistent view of the apex court in Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union, , U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant and Ors. 1995 (5) SC 75 , Scooters India and Others Vs. Vijai E.V. Eldred, L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others, , State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., and Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, where the petitioner has an alternative and efficacious remedy the writ petition should not be entertained.

22. In Chandrama Singh v. Managing Director U.P. Co-operative Union, Lucknow and Ors. (1991) 1 U.P.L.B.E.C. 898 the full Bench of this Court has also held that where alternate remedy is available, the writ would not be maintainable.

23. I am of the opinion that the relief prayed for by the petitioners can be granted only after adjudication of the facts of the case by taking oral and documentary evidence by a Tribunal which is not feasible in writ jurisdiction under Article 226 of the Constitution by the High Court.

24. For the aforesaid reasons this petition is dismissed on the ground of availability of alternative remedy 25.

25. No order as to costs.