

(2006) 04 DEL CK 0090

In the Delhi High Court

Case No : Writ Petition (C) 13463, 13464, 13465, 13466, 13467, 13468, 13469, 13470, 13471, 13472, 13473, 13474, 13475, 13476, 13477, 13478, 13479, 13480, 13481, 13482, 13483, 13484, 13485, 13486, 13487, 13488, 13489, 13490, 13491, 13492, 13493, 13494, 13495, 13496,

Kiran Pal Singh and Others

APPELLANT

Vs

B.S.E.S. Rajdhani Power Ltd.

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 04 DEL CK 0090

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Jayant Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Issue Rule. With consent of the counsel for parties the matter was heard finally.

2. The petitioners claim a mandatory order to the respondent (hereinafter referred to as "BSES") to pay them salary at par with employees of equal status in the organization. Further, directions to release payment of salary for July 2000 and for subsequent months have also been sought.

3. The Petitioners were previously working with Armed Forces, and are Ex Servicemen. They were registered with Directorate General of Resettlement. By two communications, dated 29.1.2004 and 4.2.2004, the BSES has sought information from the Directorate General of Resettlement and requested it to forward names of suitable candidates for the purpose of engaging personnel in its Enforcement, Vigilance and Special recovery operation cells. The communication dated 29.1.2004 indicated that duration of the appointment was one year, further extendable depending on continued work requirement on mutually acceptable terms and conditions. The BSES also communicated that it

would be paying such personnel minimum wages as per DGR norms normally applicable for such cases and also that it would be working out a reasonable package purposes in that regard.

4. It is not in dispute that the petitioners were deployed by BSES for a period of about three months. During that time petitioners were connected with functioning of the BSES which included Enforcement, carrying out raids of establishments, in theft cases, drawing up of reports etc. Counsel for petitioner has relied upon reports drawn up by some of the employees during that period.

5. It is contended that although the petitioners were required by and worked for BSES, they were never formally treated as its employees and instead their employer was shown to be a contractor, namely Core Corporate Solutions Pvt. Ltd. It was also submitted that the Principal and true employer always was BSES and that the contract was a mere device making the true nature of the employment. Counsel also relied upon the copies of identity cards issued on behalf of BSES and also reports and duties of the petitioners; similarly letters of appreciation issued by the BSES, have also been placed on record. Counsel appearing on behalf of the petitioner submitted that during the pendency of proceedings, BSES has illegally and arbitrarily terminated services of the petitioners.

6. Learned counsel appearing for respondent submitted that scope of the proceedings under Article 226 of the Constitution do not admit of an inquiry into the nature of the employment. He submitted that BSES's functions, in so far as it pertains to the employment of the petitioners, cannot fall within the description of public duties or public law character so as to attract writ jurisdiction of the Court. He relied upon the judgment of the Supreme Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, .

7. It was contended on behalf of the respondent that the engagement of personnel was through the contractor and due to the peculiar needs of BSES which at that time was carrying on enforcement activities. Counsel also contended that the BSES did not directly employ the petitioners and Therefore, they cannot insist that the contract should be continued. It was submitted that in case the petitioners have any grievance with their termination, it is open for them to approach proper forum or Court as the case may be.

8. The narration of facts and materials on record disclose that BSES had, through two communications, asked the Directorate General, Resettlement to recommend names for carrying out its enforcement activities including carrying raids of premises and also in certain other Vigilance work. Para 6 of the letter dated 29.1.2004 itself mentions that the requirement estimated for such engagement was for one year. It is also an undisputed fact that the petitioners were not given any formal appointment letter; they however, worked on behalf of BSES for some time. Although BSES has disputed its liability as an employer and stated that the petitioners were employed by a contractor, in my opinion that would not by itself

require investigation in these proceedings. Even if it were assumed that the petitioners were employed by BSES, nevertheless, such engagement was contractual one. At the highest, they could have claimed to be employees for one year.

9. It has been often held that the High Court in exercise of its jurisdiction under Article 226, ought not to issue directions to interdict orders of termination in cases of contractual employment and direct continuation of employees' contract of service which would otherwise have come to an end on a particular date (Ref. Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, ; Union of India and another Vs. Ashok Kumar Mitra, . In this view of the matter and having considered the submissions of the respondent about the temporary nature of the engagement, I am of the opinion that the petitioners cannot claim any relief in these proceedings. If they have grievance as far as their termination is concerned, it is open to them to agitate the same in other appropriate proceedings as is available to them in law.

10. The writ petition is accordingly rejected subject to the above observations.