

(2007) 05 DEL CK 0071

In the Delhi High Court

Case No : LPA No's. 2028-29 of 2006 and CM 6096 of 2007

Naval Kishore Nagar and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2007) 05 DEL CK 0071

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Asha Jain Madan, Mukesh Jain, Dushyant Parashar and Ambar Jain, for the Appellant; V.N. Koura, Rakesh Sawhney and Paramjit Benipal, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.

CM No.6096/2007

1. We have perused the application filed by the appellants and also heard the learned Counsel appearing for the appellants. The prayer made in this application, for permission to withdraw the writ petition, cannot be granted by us as we are dealing with the appeal arising out of the order passed in the writ petition. There is no prayer for withdrawal of the appeal petition made in this application. In our considered opinion, the application cannot be entertained and is accordingly dismissed.

LPA 2028-29/2006

1. The appellants herein filed a writ petition in this Court which was registered as WP(C)1822/1997 contending inter alias that they were ex-servicemen who had worked for 16 to 18 years in defense service as Communication Operators and after their retirement from defense service they were working as

Telecommunication Operators with Oil Natural Gas Commission/respondent No. 2 herein continuously, without any break for 240 days.

2. In paragraph III of the writ petition it was stated by the appellants that the job performed by them was of permanent and perennial nature but yet they were employed ostensibly through a contractor, who was only a name lender and that the appellants were under the direct control and supervision of the ONGC. It was also stated that the engagement of the appellants through contract was only a camouflage and that if the veil was lifted, it would have revealed that there was a direct employer-employee relationship between the ONGC and the appellants. It was also contended that the engagement of the appellants through contractor was basically for monetary and other gains as the contract workers were being provided much less wages than regular employees. In the writ petition it was also contended that some other workers of ONGC who are similarly situated as the appellants had filed a writ petition before this Court being WP(C) No. 3106/1995 and under order dated 28th September, 1995 a direction was issued to take the workers on ad hoc basis during the pendency of the writ petition. It was also the stand that although the appellants were not parties to the said writ petition, but the respondent No. 2- ONGC gave the status of ad hoc employees to the appellants also w.e.f. 1st October, 1995 and, Therefore, in view of the judgment of the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], , respondent No. 2-ONGC should be directed to absorb the appellants in regular service against their existing posts with the same wages as paid to the regular employees.

3. The reliefs sought for by the appellants in the said writ petition were for restraining ONGC from terminating their services and also for a declaration that the appellants are direct employees of ONGC, or to issue a direction to regularise the services of the appellants in their existing service/posts with effect from their initial appointment through the contractor, giving them equal wages and other consequential benefits.

4. However, after hearing the parties, the learned Single Judge dismissed the writ petition relying on the decision of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, . It is needless to point out at this stage that the decision rendered by the Supreme Court in *Air India Statutory Corporation (supra)* came to be overruled by the subsequent decision of the Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, . Being aggrieved by the aforesaid order the appellant filed the present appeal on which we have heard the learned Counsel appearing for the parties.

5. The appellants who had filed WP(C) No. 1822/1997 were part of approximately 105 contract labourers who were employed by the contractors to render various services to the ONGC pursuant to the service contract awarded to them by the ONGC. The other 103 similarly situated contract labourers filed writ Petitions being WP(C) Nos. 5749/1993, 4677/1994, 4732/1994, 3106/1995 and

2264/1996. In WP(C) No. 3106/1995 an interim order was passed on 28th September, 1995, directing ONGC to continue the employees on ad hoc basis for the same work which they have been performing for ONGC even after termination of the contract. Pursuant thereto, ONGC continued their employment on ad hoc basis giving them ad hoc short term appointments which were extended from time to time. The said writ petitions were decided by order dated 29th September, 1997 wherein the learned single Judge directed for regularisation of all concerned contract labourers on the basis of the Judgment rendered by the Supreme Court in the case of Air India Statutory Corporation (supra).

6. The aforesaid judgment was challenged by the ONGC by filing LPA Nos. 5,6,7,8 & 12 of 1998. By interim order dated 27th July, 1998, a Division Bench of this Court issued a direction that those persons who fulfill the requirements for employment in the respondent Corporation under the applicable recruitment and promotion rules of the ONGC shall be appointed by ONGC subject to the outcome in the LPAs. On 9th January, 2002 when WP(C) No. 1822/1997 came up for hearing counsel for the appellant made a statement to the court and in the light of the said statement the following interim order was passed in the case of the appellants:

Heard Ld. Counsel for the parties. Learned Counsel for the respondent has pointed out that there were 16 similarly situated persons out of which 14 persons approached the court being contracted labours for being absorbed. In view of the law prevalent then in terms of the judgment in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , the said 14 persons were granted relief by this Court by order dated 29.9.1997 in CWP 3106/95 and connected matter. Against the said judgment an LPA has been filed which was admitted on 27-7-1998 but no stay was granted of the impugned order and the petitioners therein were directed to be absorbed subject to outcome of the appeal. This was subject to the relevant person having requisite qualification.

The learned Counsel for the respondent contends that though the initial claim in this writ petition was based on Air India Statutory Corporation's case (supra) the respondents in this counter-affidavit took the point that the said judgment will not apply in view of the fact that the petitioners have been granted ad hoc appointment directly. Learned Counsel for the petitioner states that the present petitioners will abide by the judgment which may be passed in LPA 12/98 and the petitioners be treated on the same footing. Learned Counsel for the respondent would seek instructions in this behalf as also on the fact whether the respondent is still interested in prosecuting LPA 12/98 insofar as the absorption of the 14 other persons are concerned. List on 6.2.2002.

7. When the matter again came up on 6th February, 2002 the following order was passed in the said writ petition.

In pursuance to the last order learned Counsel for the respondent says that he has instructions that the respondent is still interested in prosecuting LPA 12/1998. Learned Counsel for the respondent state that the respondents are not willing to accept the proposal of the learned Counsel for the petitioner that the present petitioner continue to work on the same terms and conditions as the 14 persons who are respondents in LPA 12/1998 and that he would abide by judgment passed in the said LPA. In view thereof the present petition be listed only after disposal of LPA 12/1998 and learned Counsel for the parties are granted liberty to approach this Court for fixing the date in the present petition after the disposal of LPA 12/1998.

8. The five appeals which were registered as LPA Nos. 5,6,7,8 & 12 of 1998 came up for hearing before this Court when under order dated 22nd December 2005 the Division Bench allowed the appeals with a direction that services of the persons who were appointed by the respondent Corporation pursuant to the interim order passed shall stand terminated with immediate effect.

9. Being aggrieved by the said judgment and order passed in the five appeals, Special Leave Petitions were filed in the Supreme Court which were dismissed by the Supreme Court by order dated 8th December, 2006.

10. Counsel for the appellants however submitted before us that cases of the two appellants are different and should be considered separately from that of the cases of other persons who had filed similar writ petitions as referred to above.

11. We have considered the said submissions and on going through the records we find that the facts of this case are almost similar. In fact, in WP(C) No. 1822/1997, the appellants themselves have referred to WP(C) No. 3106/1995 contending inter alia as follows:

some of the other workers of ONGC similarly situated as the petitioners had filed a writ petition before this Court being WP(C) No. 3106/1995 and this Hon"ble Court had vide order dated 28th September, 1995 directed the respondent ONGC to take the workers on ad hoc basis during the pendency of the writ petition

12. Though the appellants herein were not parties in the said writ petition, the respondent ONGC gave them the same status as ad hoc employees suo moto with effect from 1st October, 1995. However, since then appellants were treated for all purposes at par with the workers in WP(C) No. 3106/1995. It is also clearly established from the averments made in paragraphs I to IV of the writ petition that the appellants herein were also engaged initially through contractors and such engagement through contractors was also a subject matter raised in the writ petition contending, inter alia, that such engagement through contractors was camouflage and was made in order to make monetary benefits.

13. A perusal of the writ petition would indicate that the appellants claimed relief in the light of the judgment passed by the Supreme Court in Air India statutory Corporation case (supra). But the said judgment was since reversed by a

Constitution Bench of the Supreme Court in Steel authority of India Limited case (supra) wherein it was held by the Supreme Court that the proper authority to go into the disputed question of facts is Industrial Tribunal/Court and not the High Court in a writ jurisdiction.

14. The appellants were engaged by the contractor and they were deputed to render services to the respondent Corporation as contract labour. Subsequently, in view of the interim order passed, the respondent Corporation engaged the appellants purely on ad hoc basis with effect from 1st October 1995 for a temporary period of two months with the condition that the appellants would not be entitled for any regular employment and that their services would be liable to be terminated even during the said period of two months without notice and without assigning any reason. The aforesaid appointments made on ad hoc basis were thereafter extended from time to time on the same terms and conditions in terms of the interim order passed by this Court in WP(C) No. 3106/1995. It is also established from records that initial engagement of the appellants were not made on the basis of any selection process or invitation to the public or other method of inviting applications from the public or in accordance with the recruitment and promotion rules of ONGC but were made purely on the basis of ad hoc appointments as contract labour.

15. Claims of ad hoc appointees were also subject matter of the decision rendered by the Supreme Court in the case of Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra). In the said judgment the Supreme Court has held as under:

Adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc

employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

It was further held as under:

While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to avoid a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of

the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionally and equality of opportunity enshrined in Article 14 of the Constitution of India.

16. Counsel for the appellants at one stage had submitted that they have not only completed 180 days attendance in a period of 12 consecutive months but have also put in more than 240 days in a particular year and also have the minimum qualification prescribed for being appointed as regular employees in their posts. Relying on the same, the counsel submitted that the appellants should not be declared as temporary workmen but they should now be declared as regular employees.

17. We find that no such averments were at all made and there was no foundation to such claims in the writ petition. Such claims are also required to be made not by filing a writ petition but in a proper manner, as a specific remedy is available to the aforesaid claims.

18. In view of the decision of the Supreme Court in Uma Devi's case (*supra*), we find no reason to interfere with the decision of the learned Single Judge. The Appeal has no merit and is dismissed.