

(2013) 02 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18619 of 2011

Nishan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12, 23, 24, 25

Citation : (2013) 02 P&H CK 0101

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : K.S. Dadwal, Mr. S.K. Pipat, with Mr. M.K. Pundir, Mr. C.L. Pawar, Mr. Ranjit Sharma, Mr. S.S. Grewal, Mr. G.S. Bal with Ms. Kritka, for the Appellant; Harsimran S. Sethi, Additional Advocate General, Punjab and Mr. Anil Kshetarpal, Advocate for ETTSA, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—By this order, I propose to dispose of a bunch of writ petitions which relate to the Department of Revenue, Punjab, i.e. Civil Writ Petitions No. 18619 of 2011, 8413 and 24523 of 2012 and Civil Writ Petitions No. 16395 of 2012, 18761 of 2010, 14782, 16509, 16845, 16926, 17435, 17732, 18624, 19123, 21865, 24531, 24564 of 2012 and 1721 of 2013, which relate to Department of Excise and Taxation, Punjab, wherein the petitioners are claiming regularization of their services as per the Punjab Government policy instructions dated 18.3.2011 and 17.11.2011 by asserting that despite they being employed by the Service Providers would be covered by the said policy of regularization and entitled to the claim made in the present writ petition. So far as the petitioners' claim to be the employees of the Revenue Department, Punjab, is concerned, facts for convenience sake are being taken from CWP No. 18619 of 2011 titled as Nishan Singh and others Versus State of Punjab and others, out of the writ petitions pertaining to the petitioners who claim themselves to be the employees of Department of Revenue, State of Punjab. It has been pleaded that

the Government of Punjab took a decision to upgrade the divisions, which resulted in declaration of Tarn Taran, Barnala and SAS Nagar, Mohali, as districts. Because of upgradation of the sub divisions to that of districts, a large number of posts of Clerks, Stenographers, Drivers, Peons and Sweepers were created by the Government of Punjab. With the coming into existence of these districts and creation of posts, immediate need to fill up all these vacancies was felt and a decision was taken for doing so through outsourcing, i.e. appointments be made through the Service Providers. Qualifications for the different posts as per the Statutory Rules were also provided to be fulfilled by the persons to be so appointed through the Service Providers. Petitioners fulfilling the said qualifications were appointed through the Service Providers against the regular sanctioned posts on different dates in the year 2006. Since then the petitioners are continuing with the respondents and have been given each year a fresh contract as their work and conduct has always been found to be good. They were also issued the identity cards by the officers under whom they had been performing their duties. Their work has also been found appreciable and appreciation letters were also issued to them. Postings have also been given by the Deputy Commissioners and even their services were transferred from one place to another, but always against the sanctioned post and for all intents and purposes, they were treated to be the employees of the Department of Revenue, Punjab. Keeping in view the work and conduct of the petitioners as also the availability of the permanent sanctioned posts, the concerned Deputy Commissioners had written letters to the Financial Commissioner-cum- Principal Secretary to Government of Punjab, Department of Revenue, recommending therein the regularization of services of the employees working through the Service Providers. It has been stated therein that the petitioners fulfill all the requisite educational qualification, their work and conduct is found to be good and further that the experience gained by these Service Providers employees would go waste and would facilitate the functioning of the department.

2. In the light of the recommendations made by the Deputy Commissioners concerned, a meeting was held on 12.12.2008 under the Chairmanship of the Chief Secretary to Government of Punjab wherein a decision was taken and recommendation made that the employees appointed through Service Providers may be regularized. In view of this decision, the Deputy Commissioner, Tarn Taran, respondent No. 3 had sent recommendation dated 6.1.2009 for regularization of services of the employees appointed through Service Providers. Copy of the recommendation has been appended as Annexure-P-5. When no further action was taken, the Deputy Commissioner, Tarn Taran again, vide letter dated 27.8.2009 (Annexure-P-6), addressed to the Financial Commissioner-cum- Principal Secretary to Government of Punjab, Department of Revenue-respondent No. 2, recommended regularization of services of petitioners as also other Service Provider employees. A representation was also submitted by the Service Provider employees to the Chief Minister, Punjab, Chief Secretary, Financial Commissioner and Deputy Commissioners concerned for regularization of their

services and for grant of pay scales. This representation is dated 6.10.2009 (Annexure-P-7/1) Even the Deputy Commissioner, SAS Nagar, Mohali-respondent No. 6 in compliance to a letter dated 9.9.2010 seeking information with regard to outsourcing staff who were recruited on the constitution of new districts had apart from granting the said details assessed the expenditure which would accrue in case the services of these employees are regularized. Copy of the communication dated 12.10.2010 is appended as Annexure-P-8.

3. The Government of Punjab took one time policy decision for regularization of services of the employees who have completed three years" service dated 18.3.2011. It not only covered the employees who were employed as daily wagers and workcharge, but also covered the employees appointed on contract basis who were working on permanent posts and were appointed after fulfilling their eligibility criteria as per the proper procedure. It not only provided that their services be regularized either from 1.4.2011 or on completion of three years" contract service, whichever is later. The Government having taken a conscious decision in order to regularize the services of the contract employees, petitioners assert that they being covered by the said policy were entitled to regularization of their services and, therefore, submitted representations to the respondents with a request to implement the said policy qua the petitioners and similarly placed employees who have been appointed through the Service Providers. In the Department of Education, Punjab, while considering the cases of computer teachers who were appointed through outsourcing, a conscious decision was taken that whosoever has completed 21/2 years" service be regularized. Copy of the said letter is appended as Annexure-P-11. Despite this decision, no benefit was given to the petitioners and their services were not regularized and they were being discriminated against. Although, the work and conduct of the petitioners has been found to be good and the recommendations were made for regularization of their services. Yet, the Department of Revenue, Punjab decided to fill up various vacancies in the Department and for that an advertisement dated 28.7.2011 was published by the Subordinate Services Selection Board, Punjab-respondent No. 7 in the Newspaper Daly Ajit. Copy of the said advertisement is appended as Annexure-P-13.

4. Petitioners filed CWP No. 14866 of 2011 claiming the right of regularization in the light of Punjab Government policy decision which came up for hearing on 16.8.2011 when this Court was pleased to grant permission to the petitioners to withdraw the writ petition with liberty to approach the competent authority. In pursuance thereto, petitioners served a legal notice dated 18.8.2011 (Annexure-P-14) upon respondents No. 1 and 2 with a prayer to consider the case of the petitioners for regularization of their services as per the policy decision dated 18.3.2011 (Annexure-P-9) and remove discrimination. It was asserted in the legal notice that the claim of the petitioners be decided at an early date as no decision on the same would go against the interest of the petitioners and by filling up the posts as per the advertisement issued by the respondents, their right would be prejudiced as there would be no posts available against which the

petitioners would be entitled to regularization of their claim, as according to the policy dated 18.3.2011 (Annexure-P-9), appointment can only be on vacant sanctioned posts. When no response was received to this legal notice, petitioners have preferred the present writ petition claiming regularization of their services.

5. Reply to the writ petition has been filed by the respondents wherein it has been stated that petitioners are not entitled to any benefit from the respondents as there is no relationship of employer and employee between them. Petitioners are employees of Service Providers and, therefore, cannot claim any benefit from the respondents for the services rendered by them. Tenders were invited from time to time from the Service Providers and contract was given to the lowest tenderer for providing the manpower to the office of Deputy Commissioners. The manpower was supplied by the Service Providers and the payment was also made, as per the contract, to the Service Providers, who in turn paid the remuneration to the petitioners. The office of Deputy Commissioners never issued appointment letters to the petitioners and the emoluments are being paid by the Service Providers to the petitioners. Although, the Deputy Commissioners make the payment to the Service Providers in lump-sum for the persons deputed by him to provide services in the offices of the Deputy Commissioners. No application for appointment etc. was received from the petitioners directly nor was any direct appointment made by the offices of Deputy Commissioners of the petitioners. There is no contract between the petitioners and Deputy Commissioners directly or indirectly. The agreement entered into between the Service Providers and the Government offices is that the persons deployed with the Government offices are under the control and supervision of the Service Providers and no appointment letters were directly issued to the petitioners. Specific tasks, according to the instructions of the Service Providers, were given to the petitioners and, therefore, they cannot be treated as regular employees of the department. Reference has been made to condition No. 15 of the agreement entered into between the Deputy Commissioners and Contractors which clearly lays down that the persons deployed by the Service Providers shall be under the overall control and supervision of the Contractor and the Contractor shall be liable for their wages as per stipulated rates and all other dues within the stipulated time. The Contractor will be liable to various labour regulations and other statutory provisions. The Deputy Commissioner shall be absolved from any such liability in this regard. As regards the issuance of identity cards to the petitioners, it has been stated that these were issued to facilitate their entry in the office which will not lead to an inference that there is any relationship of employee and employer between the petitioners and respondent-department. Recommendations made by the Deputy Commissioner, Tarn Taran, vide letter dated 6.1.2009 in favour of the petitioners for regularization of their services has been admitted as also the meeting of the Chief Secretary and recommendations for regularization of their services, but this proposal is stated to have not materialized at the level of Government as the same was not accepted by the Government. Thus, it does not accrue any right in favour of the petitioners.

6. As regards the assertion that the provident fund was deducted by the Government, it has been stated that no payment is being made by the Government to the petitioners and, therefore, there is no question of deducting the provident fund. The assertion of the petitioners that they are entitled to regularization of their services in the light of the policy decision dated 18.3.2011 (Annexure-P-9), it has been stated that the said policy is applicable only to those persons who were engaged by the Government directly on daily wage, workcharge employees or to the employees who were directly appointed by the Government on contract basis with a further rider that these persons should be working on a permanent post on fulfilling the eligibility criteria and their appointments are made through proper selection procedure of advertisement etc. Petitioners are employees of the contractor and there being no relationship of employee and employer between the petitioners and Government, their services can be withdrawn by the contractor at any time. The department can also ask the contractor to withdraw the petitioners from work which they have been assigned.

7. The assertion of the petitioners that they have been discriminated against as similarly placed employees appointed through the Service Provider in the Education Department, i.e. Computer Teachers, have been regularized on completion of 2 1/2 years of service, it has been stated that these employees were directly appointed on contract basis by a Society called the Punjab ICT Education Society, floated by the department itself which was wholly owned and controlled by the Education Department, Punjab. Their appointments against sanctioned posts were made in consonance with the statutory requirements for determining the eligibility and after proper advertisement and selection against the sanctioned post. The policy decision of the Government of Punjab dated 2.12.2010 is specific to the Computer Teachers of the Government Society which cannot be pressed into service by the petitioners to contend discrimination as the case of the petitioners is different and distinct from that of Computer Teachers.

8. Replication has been filed by the petitioners to the writ petition wherein an additional ground has been taken by asserting that the respondent- State has failed to show as to how the case of the petitioners is not covered by the policy dated 18.3.2011 (Annexure-P-9), especially when the contractor through which the petitioners were appointed was not having any license and he was planted just as an eye-wash and to keep the employees in dark. Since there is no valid license with the contractor, petitioners became direct employees of the principal employer, i.e. respondents and, therefore, are entitled to be treated as contractual employees, enabling them to be considered for regularization of their services. It has, therefore, been asserted that the claim as made by the petitioners in the writ petition deserves to be allowed.

9. In the other set of writ petitions, where the petitioners are working in the Department of Excise and Taxation, Punjab, as Data Entry Operators, facts are primarily being taken from CWP No. 16395 of 2012 titled as Hardev Singh and

others Versus State of Punjab and others, wherein it has been asserted that keeping in view the workload and the necessity of qualified persons and in the light of the ban imposed by the Government of Punjab on recruitment on regular basis appointments in the year 2004 were made through the Service Providers of Data Entry Operators. A public notice was issued by a company called "The Providers" claiming itself to be a leading manpower recruiters which required immediately for its clients 170 Data Entry Operators/Supervisors to be posted at the Excise and Taxation Barrier (ICC Centres) at various locations all over Punjab. In pursuance to this, petitioners applied and were appointed as Data Entry Operators at various ICC Centres under the Department of Excise and Taxation, Punjab. Although, the period for which they were appointed was mentioned in the employment letters, but the petitioners are continuously serving the respondents since then. The appointment letters were issued through Service Providers for a fixed term as per contractual appointment wherein it has been mentioned that they are being appointed in the Department of Excise and Taxation, Punjab. They were kept on probation for one month apart from which other conditions were also mentioned. Copy of one such appointment letter is appended as Annexure-P- 2. Although, the petitioners had been appointed through the Service Provider but they had been directly serving under the respondents and even final action was taken against them for the mis-conduct after holding an inquiry. Some of the petitioners assert that they were initially appointed in the year 1999 by the department and thereafter with effect from the year 2004 through the Service Providers and had been continuing with the respondents. They also are claiming regularization of their services in the light of the policy dated 18.3.2011 as also policy dated 17.11.2011 (Annexure-P-5) which relate to regularization of the services of employees working on contract basis in different departments, i.e. Boards/Corporations/Cooperative Societies and other Societies and other autonomous bodies. It has been stated that the appointment letters to the petitioners have been issued by the Department of Excise and Taxation, Punjab, and, therefore, they are its employees.

10. To the reply which has been filed by the respondents, it has been asserted that the petitioners have been appointed through the Service Providers and, therefore, are not the employees of the Excise and Taxation department. The appointment letter, which has been appended with the writ petition, is not a complete document. As a matter of fact, material facts have been withheld by the respondents, according to which, a declaration was submitted by the petitioners that they were deployed by their employer who was the Service Provider in pursuance to the contract entered into between his employer and the respondents. An undertaking was also given that they would not make any claim whatsoever in any forum against the Department of Excise and Taxation, Punjab or the Excise and Taxation Technical Services Agency (in short ETTSA)-respondent No. 5 or M/s CMC Limited who had entered into an agreement with the Service Provider. The claim of the petitioners for regularization as per the policies dated 18.3.2011 and 17.11.2011 has been denied on the ground that the

petitioners do not fall within the said policy decisions and their claim is not covered by the same and, therefore, their services cannot be regularized.

11. Reply has been filed by ETTSA-respondent No. 5 wherein it has been stated that the said Society was set up and got registered by the Government of Punjab in December, 2001 for providing technical and IT services as also computerization to the Department of Excise and Taxation, Punjab. It has been helping computerization of various offices, Information Collection Centres apart from providing various other technical services to the department as and when required. In the year, 2003, requirement was felt for computerization of Sales Tax Information System on higher skill and, therefore, tenders were invited and an agreement was entered between the ETTSA and M/s CMC Limited appointing M/s CMC Limited as System Integrated for computerization of Sales Tax Information System which was with the introduction of the Value Added Tax (in short "VAT") converted into computerization of VAT Information System in April 2005. This agreement broadly provided for supply of hardware, software, networking of various offices and Information Collection Centres, data entry etc. The total cost of the project was estimated at Rs. 45 crores spread over a period of five years. Duration of the contract has been extended from time to time and the latest extension comes to an end on 31.12.2012. The CMC Limited had further sublet the work of data entry to a company, namely, "The Providers" sub vendor. Since the contract with CMC Limited was coming to an end and there was requirement for further advanced hardware and software for handling of huge information being generated and faster networking, tenders were invited and a contract was given to Wipro Limited for computerization of Tax Information System, which was signed on 16.2.2011. Wipro Limited is in the process of taking over of the project in stages which has spread over a period of five years.

12. The work of Data Entry Operator is to feed information as supplied by transports at Information Collection Centres with respect to material coming in and going out of the State. With the development of web services and internet, Electronic Information Collection Centres (in short "E- ICCs) have been introduced which facilitates the transporters to generate information at their own end and supply the same at the ICC to the officials posted therein. Now, the transporters are not required to stop their vehicles at the ICCs for getting their information entered in the computer with the help of data entry operators. The work of data entry thus, has been substantially reduced by approximately 65 per cent. Over a period of time, the requirement of data entry operators has come down from 370 to 232 which will be further reduced with more and more transporters, opting for EICCS. An objection has been raised by the respondent by asserting that the writ petition deserves to be dismissed for non-joinder of necessary parties as neither "The Providers" nor the "CMC Limited" have been made parties who would be the Service Providers and the appointment of the petitioners being through them, there is no relationship of employer employee between the petitioners and respondents. Prayer has thus, been made for dismissal of the writ petition.

13. Counsel for the petitioners has placed reliance upon the judgments of this Court in CWP No. 12199 of 2000 titled as Sukhdev Kaur Versus The State of Punjab and others, decided on 23.9.2002, CWP No. 8240 of 2008 titled as Dalbir Singh and others Versus Pepsu Road Transport Corporation, Patiala and another, decided on 22.3.2010 and judgments of the Hon"ble Supreme Court in G.M. ONGC, G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, Secretary, State of Karnataka and Others Vs. Umadevi and Others,

14. Counsel for respondents, on the other hand, have placed reliance upon the judgments of the Hon"ble Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , Dena Nath and others Vs. National Fertilisers Ltd. and others, and Gian Singh and Others Vs. Senior Regional Manager, Food Corporation of India, Punjab Region and Others, , in support of their contentions.

15. Counsel for the parties have been heard and they have put-forth their contentions based upon the pleadings which have been referred to above. The primary thrust of the counsel for the petitioners is on the claim of the petitioners for regularization of their services in the light of policies of the State of Punjab dated 18.3.2011 and 17.11.2011.

16. It is not disputed that the petitioners are being appointed through service providers although, they are performing their duties in the Department of Revenue and Department of Excise and Taxation, Punjab. The right of the petitioner for regularization of their services would therefore depend upon the question as to whether their claim for regularization is covered by the two above referred to policy decisions of the Government of Punjab. For the said purpose, reference to the policies need to be made.

17. Perusal of the policy dated 18.3.2011 would show that it deals with regularization of services of daily wager/workcharge employees working in different departments, as per decision given by the Hon"ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, In pursuance thereto, instructions dated 15.12.2006 were issued by the State Government. After these instructions, services of daily wagers/workcharge employees who are working in different departments were not regularized because they did not fulfil the requirement of instructions. Keeping in view the hardships of the employees, opinion of the Advocate General, Punjab was taken. Information was also received from the departments regarding working of employees in the department on contract. A cabinet meeting was held on 9.8.2011 wherein a decision was taken that employees, who are working on permanent posts on contract basis and were appointed after fulfilling their eligibility criteria as per proper procedure, their services be regularized either from 1.4.2011 or after completion of three years contract service whichever is later and for the same, no new post would be created. Other conditions were also imposed in this policy. However, this Court is not concerned with the same.

18. A perusal of this policy would show that it is applicable to the employees, who were working as daily wagers/workcharge/contract basis on permanent posts and were appointed by the State of Punjab after fulfilling eligibility criteria as per the proper procedure. Policy dated 18.3.2011 dealt with regularization of the services of not only contractual employees, but the daily wagers/workcharge employees working in different departments of the Government. By this policy dated 17.11.2011, the benefit of regularization of services was extended to the daily wagers/workcharge employees and employees working on contract basis in different departments, i.e. Boards/Corporations/Cooperative Societies/other Societies and other autonomous bodies. A perusal of both the above policies would clearly spell out that the petitioners who are employees of the Service Providers in the Departments of Revenue and Excise and Taxation, Punjab, in pursuance to the contract entered into between their employer and respondent departments. There is no relationship of employer and employee between the petitioners and respondent-department. In the absence of such a relationship, petitioners cannot claim any right against the respondents. Even the policies of regularization do not contemplate or provide for benefit of regularization of services of the employees who have been deputed by the Service Providers.

19. The assertion of the petitioners that they are direct employees of the State of Punjab and, therefore, would be covered by these policies is mis- conceived notion on their part. These policies are applicable to those contractual employees who have been directly appointed by the respondent- department. For claiming benefit under these policies, all the conditions specified therein are required to be fulfilled and if one of the conditions remains unfilled, claim under the policy fails and can never in any circumstance be extended to the petitioners. The policies do not apply to the petitioners' claim and, therefore, right of regularization pressed by the petitioners through the present writ petition cannot be accepted.

20. So far as the petitioners in the writ petitions pertaining to the Department of Excise and Taxation, Punjab, is concerned, the specific stand of the respondents is that there is no sanctioned post of Data Entry Operators in the Department of Excise and Taxation, Punjab. Further, the petitioners are employees of sub vendor, i.e. "The Providers" of vendor "M/s CMC Limited". With the coming into effect of Electronic Information Collection Centres as has been referred to above in detail, the requirement of Data Entry Operators has come down to 65%. Proposal was for shutting down the data entry work of six ICCs, namely, Amritsar Railway Station, Boha, Chak Sadhu, Mullanpur, Rajpura and Talwara with effect from 1.8.2012 as daily transaction of data entry in these centres were 50 or less. Since the stay has been granted by this Court, the petitioners are being retained in those centres. It has further been stated that the officials of the Department of Excise and Taxation, Punjab, had no role to play in selection or recruitment of the writ petitioners by the service providers. These facts further dis-entitled the claim as has been made by the petitioners in the writ petitions.

21. The assertion of the petitioners that they have been discriminated against viz-a-viz the computer teachers, who were also employees of a Society and were appointed similarly as the petitioners cannot be accepted in the light of the fact that those computer teachers were appointed in the Education Department, Punjab, directly on contract basis by the Punjab ICT Education Society, floated by the department itself. These computer teachers have been regularized as per the policy decision of the Government of Punjab dated 2.12.2010 which is specific to computer teachers of the Society, which is not the position in the case of the petitioners and their claim cannot be equated with those of computer teachers. There is thus, no discrimination meted out to the petitioners by the respondents.

22. It has been asserted by the petitioners that as a matter of fact, the petitioners are for all intents and purposes employees of the respondent-department and the services providers have been used as a camouflage to deny the petitioners of their right of regularization and others statutory benefits, especially when the petitioners fulfil all the other mandated conditions for regularization of their services except that the petitioners have been appointed directly on contract basis by the respondents. It has further been asserted that in the case of some of the petitioners, their initial appointment was with the principal employer and later on shown through contractor which was with an intention to cover up the claim of the petitioners of they being contract employee of the department. It has further been asserted that the so called service provider/contractor is an unregistered contractor who has not obtained any license u/s 12 of the Contract Labour (Regulation and Abolition Act) 1970 and, therefore, the petitioners will be for all intents and purposes treated to be the employees of the principal employer, i.e. department concerned, entitling them to the claim of regularization as per the policies of the Government of Punjab and, therefore, a direction to that effect be issued. This contention of the counsel for the petitioners cannot be accepted in the light of the latest Full Bench judgment of this Court in CWP No. 13619 of 2012 titled as Union of India and another Versus Ram Pal and others, decided on 22.2.2013, wherein apart from referring to two conflicting judgments passed by the Division Benches of this Court and to resolve the dispute therein, reliance was placed upon the judgment of the Hon'ble Supreme Court in Steel Authority of India Limited's case (supra) to assert that the question of policy of contract labour could neither be decided by the Labour Court nor the Writ Court and as a fortiori by the Tribunal as held in the said case. It was within the exclusive domain of the appropriate Government under the Labour Contract Prohibition Act. While dealing with this question, this Court held as follows :-

11. On going through the judgment in SAIL (supra), we are of the view that decision of the Division Bench in Ramesh Singh (supra) is correct view and that of Kiran Pal (supra) would not hold the field, as it is directly opposed to the judgment of the Supreme Court in SAIL (supra). Detailed reasons given by the Division Bench in Ramesh Singh (supra), taking note of all the relevant cases, are reproduced below, as we agree with the said reasoning :-

The issue whether a workman engaged by the Contractor can be deemed to be an employee of the principal employer in the event of prohibition of engagement of Contract Labour in terms of Contract Labour (Regulation and Abolition) Act, 1970 or where there is no notification prohibiting engagement of contract labour was subject matter of consideration before the Hon'ble Supreme Court in Steel Authority of India's case (supra). The Supreme Court has reversed its earlier judgment in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], prospectively. It was held that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 neither expressly or by necessary implication provide for automatic absorption of contract labour on issuing a notification by the appropriate Government prohibiting engagement of contract labour.

In *Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others*, it was held by Hon'ble Supreme Court that absorption of contract labour cannot be automatic and is not for the Court to give such direction and the appropriate forum is, to seek remedy before an industrial adjudicator. In *A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others*, there was a dispute whether there was no notification prohibiting engagement of contract labour. The Supreme Court considered its earlier judgment in *Secretary, H.S.E.B Vs. Suresh and Others etc. etc.*, and held to the following effect :-

11. In this case, there was no notification u/s 10 of the CLRA Act, prohibiting contract labour. There was also neither a contention nor a finding that the contract with the contractor was sham and nominal and the contract labour working in the establishment were, in fact, employees of the principal employer himself. In view of the principles laid down in *Steel Authority* the High Court could not have directed absorption of the respondents who were held to be contract labour, by assuming that the contract labour system was only a camouflage and that there was a direct relationship of employer and employee between the Corporation and the respondents. If the respondents want the relief of absorption, they will have to approach the Industrial Tribunal/Court and establish that the contract labour system was only ruse/camouflage to avoid labour law benefits to them. The High Court could not, in exercise of its jurisdiction under Article 226, direct absorption of the respondents, on the ground that work for which the respondents were engaged as contract labour, was perennial in nature.

Later on in *Steel Authority of India Ltd. Vs. Union of India (UOI) and Others*, it was reiterated that neither the Labour Court nor the writ Court could determine the question as to whether the contract labour should be abolished or not. The same is within the exclusive domain of the appropriate Government. It was held to the following effect :-

24. When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in *Steel Authority of India Ltd.* an industrial adjudicator

would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event if it be held that the contract (sic) purportedly awarded by the Management in favour of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.

12. No doubt at the time when the judgment in Ramesh Singh (supra) was rendered, the SLP of the Union of India in Kiran Pal (supra) was pending in the Supreme Court and that fact was not taken note of. However, ultimately, the said SLP was dismissed in limine without passing any reasoned order. Therefore, the dismissal of the said SLP is not necessarily affirmation of the view taken in Kiran Pal (supra).

That apart, in the absence of a notification by the Central Government, prohibiting the employment of contract labour, persons so employed would remain the employees of the contractor and not of the department, i.e. the principal employer. Relevant para-16 of the judgment in the case of Gian Singh and Others Vs. Senior Regional Manager, Food Corporation of India, Punjab Region and Others, reads as follows :-

16. Now let us examine the contentions of the learned counsel for the appellants that if there is violation of the provisions of the Act, to the effect that the principal employer does not get registration as required u/s 7 of the Act and or the contractor does not get the licence u/s 12 of the Act, the persons so appointed by the principal employer through the contractor would be deemed to be the direct employees of the principal employer. We see no such inference deducible from the violation of the provisions of the Act. Section 9 of the Act prohibits the employment through the contractor in case of non-registration. But if a principal employer does employ persons through the contractor in spite of non-registration, the only penal provisions are Sections 23 and 24 of the Act i.e. the principal employer can be proceeded against under these sections but the Act nowhere provides that such employees employed through the contractor would become the employees of the principal employer. If such was the interpretation then the Supreme Court in cases of Food Corporation of India Workers' Union's and B.H.E.L. Workers' Association (supra), would have straightaway granted the relief and would have held that the employees employed through the contract labour had become the employees of the principal employer and were entitled to all the benefits which were available to the regular employees, but as seen above the Supreme Court never granted such a prayer. Moreover, it would be seen from the title of the Act that it is to provide for the abolition of the contract labour and for providing certain facilities to such contract labour. As far as the abolition is concerned, as to whether in a particular establishment such contract labour should be abolished or not, the power has been given to the appropriate Government u/s 10 of the Act. The facilities which are to be provided to such contract labour by the principal employer have been provided under the Act and

if such facilities are not provided, the remedies are also provided; but by no stretch of imagination it can be said that the contract labour would become the employees of the principal employer under the provisions of the Act. As far as the Division Bench judgment of this Court in Food Corporation of India, Haryana Region, Sector-17, Chandigarh Versus The Presiding Officer, Central Government Industrial Tribunal, Chandigarh and another, is concerned, it may be noticed that the above mentioned two authorities of the Supreme Court were not noticed by the Division Bench. Otherwise also one of the Judges who was a member of that Division Bench has dismissed the writ petitions against which the present Letters Patent Appeals have been filed and while dealing with the said Division Bench judgment, the learned Single Judge has observed as under :-

This being the position in law, the facts pleaded by the Corporation in their written statement assume importance, as it has been specifically pleaded that throughout the State of Punjab there is not a single establishment where the labour employed by the contractors has exceeded ten in number. On that basis, the possession of licence by the contractors becomes immaterial u/s 12 of the Act of 1970, as persons engaged by the contractors and deployed by them on food storage as Security Guards shall remain the contract labour of the respective contractors. This precisely is the ratio of the Division Bench judgment of this Court in Food Corporation of India, Haryana Region Versus The Presiding Officer, Central Government Industrial Tribunal, Chandigarh and another.

The Hon"ble Supreme Court in Dena Nath's case (supra) in para- 22 of the said judgment held as follows (which has been approved by Five Judges Bench of the Hon"ble Supreme Court in Steel Authority of India Limited's case (supra) in para 96 thereof) :-

22. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the government after considering the matter, as required to be considered u/s 10 of the Act. The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 (sic 7) and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. We would not like to express any view on the decision of the Karnataka High Court or of the Gujarat High Court (supra) since these decisions are under challenge in this Court, but we would place on record that we do not agree with the aforequoted observations of the Madras High Court about the effect of non-registration of the principal employer or the non-licensing of the labour contractor nor with the view of Bombay High Court in the aforesaid case. We are of the view that the decisions

of the Kerala High Court and Delhi High Court are correct and we approve the same.

In the light of the above, petitioners cannot be granted any benefit in the present writ petition as none of the grounds pressed into service by the petitioners carry any weight. The writ petitions being devoid of merit stands dismissed.

23. Before parting with this judgment, it needs to be mentioned here that while issuing notice of motion in this case on 14.10.2011, this Court had put to notice the State of Punjab on the question as to whether the policies of regularization of services of daily wagers, workcharge employees and employees appointed on contract basis dated 18.3.2011 and 17.11.2011 are in consonance with the ratio of the judgment passed by the Hon"ble Supreme Court in Uma Devi's case (supra). This Court has chosen not to deal with this question in the present case as it has been found that the petitioners being not the employees of State of Punjab are not covered by these policies for regularization of their services. The question is left open to be decided in an appropriate case where such a question would directly arise. A photocopy of this judgment be retained on the connected case files.