
(2009) 05 AHC CK 0846
In the Allahabad High Court

Prem Shankar Pandey and Another	APPELLANT
Vs	
National Thermal Power Corporation Ltd. and Others	RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

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

Citation : (2009) 123 FLR 760 : (2010) 2 LLJ 258

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri S.C. Srivastava, learned Counsel for the petitioners, Sri Vivek Ratan, learned Counsel for the National Thermal Power Corporation Ltd. (in short "the NTPC") and the learned Standing counsel and also pursued the materials on record.

2. The petitioners have sought the following reliefs:

- (i) writ, order or direction in, the nature of mandamus commanding the respondent Nos. 1 and 2 to treat the petitioner to be their permanent employee from the date of their employment through Contractor;
- (ii) writ order or direction in the nature of mandamus directing the respondent No. 3 to take immediate action against the respondent Nos. 1 and 2 u/s 10 of the Contract Labour (Regulation and Abolition), Act, 1970;
- (iii) issue any other suitable writ, order or direction as the Hon'ble Court may deem fit and proper under the circumstances of the case;
- (iv) to award the cost of the petitioner.

3. It is said by the learned Counsel for the petitioners that since they have completed 240 days in a year and had worked for two years continuously, therefore, they are entitled for being made permanent in the services of the

NTPC. Reliance has been placed on Shailendra Singh and Ors. v. NTPC Ltd. (1996) UPLBEC 691 . On the contrary, the respondents NTPC placed reliance on the principles of law enunciated in Steel Authority of India Ltd. and Anr. v. State of Steel Authority of India Ltd. and Another Vs. State of West Bengal and Others, (in short SAIL. III) and a judgment of this Court in Shashi Kant Upadhyaya and Ors. v. National Thermal Corporation Ltd. New Delhi and Ors. (1992) Lab.I.C. 1610.

4. I am of the opinion that this petition is misconceived and the petitioners are not entitled for any relief.

5. The status of the contract labour qua principal, employer came up for judicial review before the Apex Court in the case of Steel Authority of India Ltd. Vs. Union of India (UOI) and Another, (hereinafter referred to as "SAIL-I"). The Apex Court held that the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "1970 Act") is a complete Code by itself. However, the employees of a contractor ipso facto cannot become the employees of the Principal employer unless it is shown from the record that the creation of the Contract system is a farce and in fact the principal employer exercises real control over such employees. Moreover, such question involves disputed questions of fact and therefore, whenever, such a dispute is raised, the same ought to have been decided before the forum provided for such adjudication, In Labour enactments and not in writ jurisdiction. Thereafter, again this matter cropped up for consideration before the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., (for short referred to as "SAIL II"). A Constitution Bench considered the matter and held that even if there was an order u/s 10 of the 1970 Act, prohibiting contract labour in any process or operation, it would not automatically result in absorption of the contract labour by the Principal employer. It was also held that it is always open to the contract labour to urge that the contract was a sham and nominal by raising an industrial dispute under the Industrial Disputes Act, 1947 and such dispute will have to be decided by the industrial adjudicator and not by the High Court; If on enquiry, the industrial adjudicator found that the contract was sham and came up there for denying labour benefits to the workers in question, it may declare so and held that the contract labours are really direct employee of the Principal employer.

6. Thereafter, it appears that an industrial dispute was raised by the employees of SAIL and the matter was referred for adjudication before the industrial forum. The said reference, was challenged before the High Court on the around that the employees and their Union at different point of time had accepted, that the workers were contract labours and at no point of time ever pleaded that the agreements with the contractors were sham and bogus, therefore, after a long lapse of time it was impermissible to raise such a dispute mainly in view of certain observations made in Steel Authority of India Ltd. and Ors. v. National Union Water Front Workers and Ors. (supra). The High Court dismissed the writ

petition. The matter went in appeal to the Apex Court in *Steel Authority of India Ltd. and Anr. v. State of West Bengal and Ors.* (supra) and the Apex Court affirming the said contention allowed the appeal and quashed the reference made by the State Government.

7. In the case before this Court, the petitioners have nowhere contended that the contract or agreement of contract Labour was a sham or camouflage. Moreover, being a disputed questions of fact, the proper remedy for the petitioners would have been to raise an industrial dispute and not to approach this Court directly by filing the writ petition under Article 226 of the Constitution of India as held by the Apex Court in *Steel Authority of India Ltd. and Ors. v. National Union Water Front Workers and Ors.* (supra).

8. Now coming to the question that the petitioners having worked for 240 days in a year and having rendered service for two years are entitled for regularization. I find that this submission is also untenable in view of the decision of the Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , which is a judgment rendered by a Constitution Bench overruling all earlier judgments taking a contrary view thereto. The law laid down in *Secretary, State of Karnataka v. Uma Devi and Ors.* (supra) has been followed in a catena of judgments in *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, *M.P. Housing Board and Another Vs. Manoj Shrivastava*, *Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others*, and it has been held repeatedly that mere working for 240 days in a year would not entitle a contractual or casual worker to claim regularization. It is true that a slight distinct note was recorded by the Apex Court in *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, but that part of the judgment in *U.P. State Electricity Board v. Pooran Chandra Pandey and Ors.* (supra) has been overruled subsequently by a larger Bench of the Apex Court in *Official Liquidator Vs. Dayanand and Others*,

9. In view of the above discussion and exposition of law, I am afraid that the present petitioners cannot be granted any relief which they have sought by means of the present writ petition. The writ petition, therefore, is devoid of merits and is accordingly dismissed.