(2017) 07 GUJ CK 0039

In the Gujarat High Court

Case No : 18293 of 2014

PWD EMPLOYEES UNION & ORS. APPELLANT

Vs

STATE OF GUJARAT & ORS. RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 16, Article 23 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Schedule - Dissolution of a District or a Regional Council - Prohibition of traffic in human beings and forced labour

Citation : (2017) 07 GUJ CK 0039

Hon'ble Judges : BELA M. TRIVEDI

Bench : Single Bench

Advocate : SHALIN MEHTA,?VIDHI J BHATT, ?UTKARSH SHARMA, ?HS MUNSHAW, ?NIRAV R MISHRA

Final Decision : Dismissed

Judgement

1. The petitioners in the present petition have sought direction against the respondent No.2 - Gujarat Water Supply and Sewerage Board (hereinafter referred to as "the Board") to apply the judgement dated 16.7.2014 passed in the Letters Patent Appeal No.325 of 2013 and other cognate Appeals arising out of the Special Civil Application No.11280 of 2010 and other cognate matters to the petitioner Nos.2 to 33, and further sought direction against the respondent No.2 Board to regularize the services of the petitioner Nos.2 to 33 in the light of the Government Resolution dated 17.10.1988 and the Circular dated 8.6.1989. The petitioners have also sought direction against the respondent authorities to pay the minimum wages as prevalent in the State to the petitioner Nos.2 to 33 and further to declare that the practice adopted by the respondent No.2 Board of outsourcing the services of the petitioner Nos.2 to 33 is violative of Articles 14, 16, 21, and 23 of the Constitution of India.

2. The short facts giving rise to the present petition are that the respondent No.2 Board is a statutory body set up by the Government of Gujarat, Narmada Water Resources, Water Supply and Kalpsar Department and works, for the development, regulation and control of the drinking water supply in the State. According to

the petitioners, the respondent No.2 Board required personnel for performing various jobs, and therefore, the petitioner Nos.2 to 33 were appointed during the period from 1.4.1992 to 2.5.2006 on daily-wage basis on various posts like Pump Operator, Valveman, Lineman, Operator and Filter Operator, etc. by the respondent No.2 Board. It is further case of the petitioners that the respondent No.2 Board had issued Circular dated 8.6.1989 extending benefits of the Government Resolution dated 17.10.1988 issued by the Roads and Building Department, to its daily- wage employees. The Board had also issued the Circular dated 30.11.1994 granting benefits of the said circular dated 17.10.1988 even to those daily-wage employees who were appointed after October 1988, however, had further directed its officers not to appoint any employees on daily- wage basis after 30.11.1994. Despite such directions, the officers of the respondent No.2 Board continued to appoint the daily-wagers, and therefore, the respondent Board decided to hire contractors for providing labour for executing the work of water supply scheme. As a result thereof, the petitioner Nos.2 to 33 were taken on the pay rolls of the contractors. According to the petitioners, the respondent No.4 was the current contractor engaged by the respondent No.2 Board.

3. It is further case of the petitioners that other daily-wagers similarly situated as the

petitioners had filed SCA No.11280 of 2010 and other cognate matters, praying for granting the benefits under the Government Resolution dated 17.10.1988 and the Court by the judgement dated 31.1.2013 had allowed the said petitions. The said judgement having been challenged by the respondent Board by filing LPA No.325 of 2013 and other cognate appeals, the Division Bench by the judgement dated 16.7.2014 had dismissed the said LPAs. Being aggrieved by the said judgement passed by the Division Bench, the respondent No.2 Board has filed SLP (C) No.29108-29114 of 2014 before the Supreme Court, in which the Supreme Court has issued notices and stayed only the payment of arrears in terms of the judgement dated 16.7.2014 passed by the Division Bench. According to the petitioners, they are similarly situated as that of the respondents in the said SLPs, pending before the Supreme Court, and therefore, should be granted the benefits of the judgement dated 16.7.2014 passed in the LPA No.235 of 2013.

4. It is further case of the petitioners that the petitioner Nos.2 to 33 are paid Rs.3,500/- per month, whereas the minimum wage as prevalent is more than Rs.6,000/- per month. The respondent No.2 Board being a model employer is duty-bound to see that the petitioners are not exploited by the contractors i.e.

the respondent No.4.

5. The petition has been resisted by the respondent No.3 by filing the affidavit-in-reply, denying the allegations made in the petition and contending inter alia that the petition against the respondent No.2 was not maintainable as the petitioners were not the workmen of the respondent No.2 Board. According to the said respondents, the Gujarat Water Supply and Sewerage Board is constituted under the provisions contained in the Gujarat Water Supply and Sewerage Board Act and is undertaking the water supply schemes throughout the State of Gujarat and more particularly in rural areas. Accordingly, the Board has laid water supply schemes for providing water to various villages of the District Dang, and the operation and maintenance of the said Schemes are entrusted to private parties/NGOs from time to time and on contractual basis. It is further stated that the respondent Board had entered into three contracts for a period of 11 months with the respondent No.4 for the operation and maintenance of the Schemes on 15.10.2013. Accordingly, the respondent No.4 was required to engage workmen as per its requirement to look after the said Schemes. If the petitioners were employed by the respondent No.4 contractor as per its requirement, the respondent No.4 was responsible for the payment of minimum wages under the provisions of Payment of Minimum Wages Act . It is further contended that the respondent Board had resolved on 30.11.1994 not to employ any

person on daily-wage basis and that since 2006- 07, there is a consistent practice to entrust the work of repairs and maintenance to the contractors. The respondent No.3 has in all 42 permanent regular full-time employees, who operate pumping machines at the 19 schemes, and therefore, the major work of the schemes is carried out by the regular and permanent employees of the Board. It is further contended that the names of the workmen, their working hours, nature of job and payment made to such workmen employed by the respondent No.4 could be provided by the respondent No.4 only, however, the respondent No.3 having called for the details about the same, the respondent No.4 had replied through the letter dated 27.1.2015 to the effect that it had engaged daily-wagers, depending upon its requirement and that they were not working for more than 2 to 3 hours per day.

6. The respondent No.4 has also filed the affidavit- in-reply, stating inter alia that the contract was awarded to the respondent No.4 for 11 months from 15.10.2013 to 15.9.2014, which was further extended for a period of six months, and has already ended in March, 2015. According to the said respondent, the said contract being not in force, the present petition qua the respondent No.4 had become infructuous.

7. The learned Sr. Counsel Mr.Shalin Mehta for the petitioners placing heavy reliance on the order

dated 31.1.2013 passed in SCA No.11280 of 2010 and other cognate matters vehemently submitted that the Single Bench had specifically held that the benefits of Government Resolution dated 17.10.1988 would be extended to the daily-wagers appointed even after 30.11.1994 and that the said judgement was upheld by the Division Bench in LPA No.325 of 2013 and others. According to him the Supreme Court, in the SLP filed by the respondent Board against the said judgement of the Division Bench has stayed the payment of arrears only and not stayed the other findings recorded in the said judgement. The petitioner Nos.2 to 33 having been appointed by the respondent No.2 Board during the period from 1.4.1992 to 20.5.2006, they were similarly situated as the petitioners of the petition being SCA No.11280 of 2010, and therefore, the directions given by the Single Bench and the Division Bench in the said petition and the LPA would be applicable to the cases of the petitioners also. He further submitted that the services of the petitioners are required to be regularized by the respondent No.2 in the light of the Government Resolution dated 17.10.1988 and the circular dated 8.6.1989. According to Mr.Mehta merely because the petitioners were employed by the contractors since 2006, their past services with the Board till the contractors were engaged by the Board could not be said to have been destroyed or wiped out. The contractors, who are engaged by the

Board since 2006, runs the submissions of Mr.Mehta, are mere name lenders because they keep on changing every 11 months, but the petitioners continue to be employed by them. He further submitted that the petitioners are working full time, however, are paid R.3,500/- per month, which is not even half the prevailing minimum wages. Such payment of less than minimum wages is violation of Articles 14, 21 and 23 of the Constitution of India. Mr. Mehta has placed heavy reliance on the decision of the Supreme Court in case of People''s Union for Democratic Rights and Ors. Vs. Union of India and Ors., reported in (1982) 3 SCC 235 to submit that the fundamental right to minimum wages can be enforced by invoking writ jurisdiction bypassing alternative remedies. Mr.Mehta also submitted that the practice of the respondent No.2 Board to outsource the work, which is of permanent nature, by awarding contracts and not ensuring whether the persons employed by such contractors are paid minimum wages or not, deserves to be strongly deprecated and also set right.

8. The learned Advocate Mr.H.S. Munshaw for the respondent Nos.2 and 3, relying upon the statement produced by the petitioners submitted that initially the petitioners might have worked with the respondent during different period ranging from 1 to 4 years, however, admittedly they were working with the contractors since 2006. According to him, the petitioners have not

given the details about the names of the contractors, with whom they were working since 2006, about the wages being paid to them, the working hours, the nature of the work, etc., and therefore, the petition without such details should not be entertained. He further submitted that there being no relationship of employer and employee between the respondent Board and the petitioners, the petitioners could not be granted the benefits of the Government Resolution dated 17.10.198, which would be applicable to the daily-wagers directly employed and paid by the Board. Distinguishing the judgement delivered in SCA No.11280 of 2010 and others, he submitted that the petitioners of the said petition stood on different footing than the present petitioners, and therefore, the said judgement could not be made applicable to the petitioners. He also submitted that the petition was bad for non-joinder of necessary parties, as the Board had entered into various contracts with various contractors for the operations and maintenance of its water supply scheme since last more than 10 years, and therefore, the contractors with whom the petitioners were working since 2006 were required to be joined as party respondents in order to ascertain the factual position. He also submitted that the petitioners had never raised any grievance or complaint at any point of time since 2006 that they were not being paid the minimum wages by the contractors, even otherwise

there is an alternative forum available to the petitioners under the Payment of Minimum Wages Act to raise such grievance. In short the learned Advocate Mr.Munshaw has submitted that there being disputed questions of facts involved in the petition, the Court should not entertain the petition filed under Article 226 of the Constitution of India, more particularly on the basis of vague and evasive statements.

9. The learned Advocate Mr.Nirav Mishra for the respondent No.4, taking the Court to the documents produced by the petitioners along with the petition, submitted that the petitioners had not come with clean hands and had portrayed distorted version of facts. He supported the contentions raised by Mr.Munshaw that the petitioners have alternative efficacious remedies available under the Minimum Wages Act, Industrial Disputes Act and Contract Labour (Regulation and Abolition) Act, and therefore also the petition deserves to be dismissed. He has relied upon various decisions of this Court and of the Supreme Court to buttress his submissions that the proper forum provided by the law cannot be short-circuited, even though it may be time consuming, and that the issues pertaining to the payment of wages less than the minimum wages should not be entertained by the High Court in the writ jurisdiction. Elaborating the submissions on factual aspects, he submitted that the petitioner Nos.3, 8, 28 and 29 were working

at some other Schemes whose work was allotted to the other contractors and not to the respondent No.4. The petitioner Nos.27 and 30 were also not working with the respondent No.4, and therefore, the submissions made in the petition were misguiding. He also submitted that none of the petitioners had raised any grievance before the statutory authority, and that the present petition was filed only for taking undue advantage of the judgement given in SCA No.1563 of 1992 and LPA No.325 of 2013. He further submitted that as per the pumping register produced by the petitioners, many petitioners had not worked at all for months together and many had worked for hardly two to three hours in a day. In cases of some of the petitioners, there was no counter signature of any authority, and therefore also such register would lack authenticity and could not be relied upon. According to him, the President of the petitioner No.1 Association, who had affirmed the petitioner and other affidavit was required to be prosecuted for making false and misguiding statements in the petition.

10. Before adverting to the issues involved in the petition on merits, it would be necessary to advert to the preliminary objections raised by the learned Advocates for the respondents as regards the maintainability of the petition. At the outset, it is required to be noted that though the petitioner Nos.2 to 33 were working at

different places, at different posts during different periods and with different contractors, this common petition has been filed, and that too, without giving proper details about their services. None of the petitioner Nos.2 to 33 have filed any affidavits giving exact details about their employment either with the respondent Board or with the various contractors. The affidavit affirming the petition and the affidavit-in-rejoinder have been filed by the President of the petitioner No.1 Union. The Court fails to understand as to how the President of the Union could file the affidavit on behalf of the other petitioners with regard to the factual aspects of their service details, more particularly when the said details have been seriously disputed by the respondents.

11. It is further required to be noted that though as per the case of the petitioners the respondent Board had engaged various contractors during the period from 2006-2014, with whom the petitioner Nos.2 to 33 had allegedly worked as per the details given in Annexure-A, the said contractors have not been impleaded as party respondents in the petition, except the respondent No.4. The contract of respondent No.4 was only for a period of 11 months from 15.10.2013 to 15.9.2014, which was further extended for a period of six months and had ended in March 2015. Hence, without impleading the other contractors with whom the petitioner Nos.2 to

33 had allegedly worked, it is difficult to ascertain as to whether the said petitioners had, in fact, worked with the said contractors. Again as transpiring from the record of the petition itself, the petitioner Nos.3, 8, 27, 28, and 29 were working at the schemes like Pipaldad, Mahavardar, Subir, Bhisya, whose work was not allotted to the respondent No.4. The petitioners have not even bothered to submit the details about the contractors with whom they were working and about the period during which they had worked. Thus, the petition is not only bad for non-joinder of necessary parties, namely the concerned contractors with whom the concerned petitioners had allegedly worked, it lacks incorporation of the basic facts.

12. The Court also finds substance in the objection raised by the learned Advocates for the respondents that the petitioners without exhausting the

alternative efficacious remedies available under various statutes namely the Industrial Disputes Act, 1947, the Contract Labour (Regulation and Abolition) Act, 1970 and the Minimum Wages Act, 1948, could not have invoked the extraordinary jurisdiction of this Court by way of a petition under Article 226 of the Constitution of India, more particularly when the petition involves highly disputed questions of facts. It is needless to say that there are statutory forums available under the said Acts, for settling or resolving the grievances and

disputes between the employees and the employers. When the petitioners have prayed for the issuance of writ of mandamus directing the respondent authorities to pay the minimum wages as prevalent in the State, they were required to approach the authority created under Section 20 of the Minimum Wages Act, to hear and decide the claims arising out of payment of less than the minimum rates of wages. Similarly the Contract Labour (Regulation & Abolition) Act, 1970 has been enacted to regulate the employment of contract labour in the establishment. Any violation of any of the provisions of the said Act entails penal consequences. The primary object of the Act is to stop exploitation of contract laborers by the contractors or the establishments. The Act does not purport to abolish contract labour in its entirety, nor to treat the employees of the contractor as the employees of the establishment. It is not disputed that the petitioners have never raised any objection or made any complaint before any authority or even before the respondent Board with regard to the violation of any of these statutes. It is for the first time the petitioners have raised such grievance in the present petition, which in the opinion of the Court could not be entertained. Unless there are justifiable reasons, no person could be permitted to undermine the authority or the forum specially created under the statute.

13. The learned Sr. Advocate Mr.Shalin Mehta has

placed heavy reliance on the decision of the Supreme Court in the case of People''s Union for Democratic Rights and Ors. Vs. Union of India and Ors. (supra) to submit that non-payment of minimum wages is a breach of fundamental right guaranteed under Article 23 of the Constitution of India and that the violation of the Labour Laws must be viewed with strictness. There could not be any disagreement with the ratio of the judgement relied upon by Mr.Mehta, however, in absence of specific details as to how much wages were paid to the petitioners and by which of the contractors and during which period, or how they were exploited by the contractors it is difficult to hold any of the respondents responsible in the present petition, when the said contractors, except respondent No.4, are not joined as party respondents, and also when the petitioners had never raised such grievance before the said contractors or before any authority for so many years. Thus, the petition involving highly disputed questions of facts, lacking requisite details and material, filed without exhausting alternative, efficacious statutory remedies and without impleading necessary parties, does not deserve any further consideration, however, let us examine the merits of the petition also.

14. The petitioners have sought direction against the respondent No.2 Board to apply the judgement dated 16.7.2014 rendered by the Division Bench in LPA No.325 of 2013 and others arising out of the

Special Civil Application No.11280 of 2010 and others, and have also sought regularization on the basis of the Government Resolution dated 17.10.1988. It is true that the Government in R & B Department vide the said Government Resolution dated 17.10.1988 had resolved to grant various allowances and other benefits to the semi-skilled employees employed on daily-wage basis asper the recommendations made by the Committee, and that the application of the said Government Resolution was extended to other departments of the Government and to the respondent Board also. It is also true that the Single Bench while dealing with the said Government Resolution had directed the respondent Board to grant the benefits of the said Government Resolution to the petitioners of the said petitions. It is also true that the said judgement having been challenged by the respondent Board before the Division Bench in the LPA No.325 of 2013 and others, the said appeals were dismissed, against which the respondent Board has preferred the SLP before the Supreme Court. In the said SLP the Supreme Court has stayed the implementation of the said order passed by the Division Bench so far as payment of arrears of wages is concerned. However, the Court finds substance in the bone of contention raised by the learned Advocate Mr.Munshaw for the respondent Board that the said Government Resolution would be applicable to the persons

directly employed by the Board on daily-wage basis and who have worked for the requisite number of years. The petitioner Nos.2 to 33 were admittedly employed by the various contractors since 2006 till the filing of the petition in 2014. They, therefore, could not be said to be similarly situated as the petitioners of SCA No.1563 of 1992. The present petition was filed only after the disposal of LPAs arising out of the said SCAs. There is no explanation coming forth as to why the petitioners did not take any action at the relevant time and as to why the present petition was filed after the gross delay of so many years. Even if the particulars shown in the chart prepared by the petitioners at Annexure-A are taken as true, then also it appears that the some of the petitioners had joined in the year 1992, some in 2002 and some in 2006, and they all were working with various contractors since 2006 and some had never worked with the respondent No.4. Under the circumstances, it is difficult to accept the version of the petitioners as the gospel truth that they had completed the requisite years of service so as to get the benefit of the Government Resolution dated 17.10.1988 and of the circular dated 8.6.1989, and that they were entitled to the benefit of the judgement delivered in SCA No.11280 of 2010 as confirmed in LPA No.315 of 2013.

15. At this juncture, it is very much necessary

to reproduce the principles laid down by the Supreme Court in case of State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors., reported in

(2015) 1 SCC 347, as to under what circumstances relief granted in one case should be extended in other identical cases:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of

similarly situated persons be extended to them. They would be treated as fence'' sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

16. So far as the present petitioners are concerned, they have not only failed to establish that they were similarly situated as the petitioners of SCA No.11280 of 2010, but they have also failed to explain as to why they did not challenge the alleged wrongful action of the respondents along with the said petitioners

and for so many years. The petition, therefore also,

suffers from delay, laches and acquiescence.

17. As regards the prayer for the regularization sought by the petitioners, it may be noted that the petitioners were never employed by the respondent Board after following the regular recruitment process. In case of Maharashtra State Road Transport Corporation and Anr. Vs. Casteribe Rajya Parivahan Karmchari Sanghatana, reported in (2009) 8 SCC 556, the Supreme Court has categorically held that High Courts under Article 226 should not issue directions for absorption or regularization unless the recruitment itself was made in terms of constitutional scheme.

18. A very pertinent observations made by Supreme Court in case of Secretary, State of Karnataka and Ors. Vs. Umadevi(3) and Ors., reported in (2006) 4 SCC 1 dealing with the issues of regularization or absorption are also required to be reproduced as under:-

"43. Thus, it is clear that 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 the 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."

19. Again in the recent decision in case of State of Jammu and Kashmir and Others Vs. District Bar Association, Bandipora, reported in AIR 2017 SC 11, the Supreme Court after considering various earlier decisions, has held therein as under:-

"19. The principles will have to be formulated bearing in mind the position set out in the above judgments. Regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open to Courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc

employee the right to seek a writ commanding the State to frame a scheme for regularisation. Otherwise, this would simply reinvigorate a class of claims which has been shut out permanently by Uma Devi. Ultimately, it would have to be left to the State and its instrumentalities to consider whether the circumstances warrant such a scheme being formulated. The formulation of such a scheme cannot be accorded the status of an enforceable right. It would perhaps be prudent to leave it to a claimant to establish whether he or she falls within the exceptions carved out in paragraph 53 and falls within the ambit of a scheme that may be formulated by the State. Subject to the riders referred to above, a scheme of regularisation could fall within the permissible limits of Uma Devi and be upheld."

20. In view of the said legal position settled by the Supreme Court, the present petition deserves to be dismissed.

21. Before concluding, it deserves to be noted that the primary object of the

Contract Labour Abolition Act is to stop exploitation of contract labourers by the contractors or the establishments, however, the Act does not purport to abolish contract labour in its entirety, nor to treat the employees of the contractor as the employees of the establishment. Nonetheless, a duty is cast upon the principal employer under Section 21 of the said Act to ensure that the wages are paid to the workers employed by the contractor in the manner prescribed under the

Act. Though the contractor is responsible for payment of wages to each worker employed by him as contract labour, the principal employer is obliged to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. Such representative is required to certify the amounts paid as wages. The duty is also cast upon the contractor to ensure the disbursement of wages in presence of the authorized representative of the principal employer. If the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer is 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. Contravention of any of the provisions regarding employment of contract labour attracts penal consequences and also revocation or suspension of the licence granted under the said Act. Similarly, under Section 12 of the Minimum Wages Act, the employer is liable to pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed for such class of employees. In case of grievance or claim of the employee as regards non-payment or less payment than the minimum rate of wages, the Authority created under Section 20 of the said Act is empowered to take appropriate action and pass appropriate orders as stated therein. In

view of the said provisions of the said Acts, it is expected that the respondent Board and the respondent Contractor shall follow the provisions of the said Acts.

22. Subject to afore-stated observations, the petitions is dismissed.

