

(2023) 08 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 4013 Of 2020

Rashtriya Shramik Aghadi

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Contract Labour (Regulation And Abolition) Act, 1970 — Section 12

Citation : (2023) 08 BOM CK 0019

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Rajendra Deshmukh, Ashwini Sahasrabudhe, A. V. Rakh, V. L. Kolekar, S. G. Sangle, V. D. Sapkal, L. C. Patil, Rameez M. Shaikh, Jayesh C. Patil

Final Decision : Dismissed

Judgement

Shailesh P. Brahme, J

1. Rule. Rule made returnable forthwith. With the consent learned counsel for respective parties heard for final disposal at the admission stage.

2. The petitioner has filed this petition for the following reliefs :

"A] The Hon'ble High Court may be pleased to issue a writ of prohibition or any other appropriate writ, order or direction in the nature of writ and thereby prohibit the Respondents from hiring Security Guards and Health Workers through agencies as contractor labour.

B] The Hon'ble High Court may be pleased to hold and declare that the Security Guards and Health Workers enlisted in Annexure "C" and "E" respectively are the employees of Respondent No. 2 Tuljabhavani Mandir Sansthan.

C] Alternatively, the Hon'ble High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby direct the Respondents to regularize the services of Security Guards

and Health Workers enlisted in Annexure - "C" and "E" respectively.

D] The Hon'ble High Court may be pleased to direct the Respondents to pay wages for the services already rendered Security Guards and Health Workers enlisted in Annexure - "C" and "E" respectively equal to the wages paid to the Security Guards and Health Workers shown on the establishment of the Respondent No. 2 and pay the difference accordingly.

E] The Hon'ble High Court may be pleased to direct the Respondents to pay the difference as prayed in prayer clause – C with interest on unpaid amount @ 18% p.a."

3. The petitioner states that it is a registered trade union and espousing the present cause for 211 security guards and 100 health workers rendering services with the respondent No. 2. The respondent No. 2 is Tuljabhavani Mandir Sansthan/Temple Trust. The assets and the management of the respondent No. 2 is taken over by the Government. The Tahsildar is the manager of the respondent No. 2. It is contended that the security guards and health workers which are members of the petitioner union are the employees of the respondent No. 2. They are not getting regular scale muchless the minimum wages. The members are working for last one year to ten years. The petitioner has produced Annexure – B and C showing dues of the security guards since 2010. Further Annexure – D is produced to show the dues of health workers rendering services from the year 2010.

4. The respondent No. 2 has from time to time outsourced the services of the security guards and the health workers by entering into contract. It is stated that various work orders and the contracts are issued. A chart is produced at Exhibit – N showing the details of the security guards and their salaries. Similarly the chart in case of health workers is produced at Exhibit – P. It is contended that these labourers are under the control of either Chief Officer or the Tahsildar who are administering the respondent No. 2. They are ostensibly shown to be the contract labourers. It is further contended that the labourers suffered discrimination in the matters of payment of wages as compared to the wages paid by the employees engaged by the respondent No. 2.

5. It is further contended that members of the petitioner union made representations on 01.05.2019 to the respondent No.

2. Similar representations were made on 21.06.2019, 13.07.2019 and many more to the Assistant Commissioner of Labour. The members of the petitioner union made a demand for regularization of services and payment of arrears of wages. But no attention was paid by the respondents. The Labour Commissioner also called upon the respondent No. 2 to reply to the demand. The Labour Inspector was appointed to submit the report. The petitioner has also placed on record the supplementary demand.

6. On the premise stated above, the petitioner union has filed this writ petition

under Article 226 of the Constitution of India for the reliefs stated in the opening paragraphs of this judgment.

7. The respondents filed distinct replies from time to time contesting the pleadings and prayers of the petitioner. The respondent No. 3 filed reply on 26.10.2021 raising objection regarding maintainability of the petition for having alternate remedy before the Labour Commissioner and involving disputed questions of facts. The contentions of the petitioner are disputed by the respondents.

8. On 21.01.2022 the respondent Nos. 2 and 3 filed distinct affidavits in reply disputing the pleadings and the claim of the petitioner. It was specifically pleaded that there was no employer – employee relationship between the trust and the members of the petitioner. It is further contended that daily wagers were appointed through contractor and they were given work as and when available. The contractor is responsible for the selection of the labourers and there was no role of the respondents in selection or removal or termination of the workers. It is further contended that the provisions of the Maharashtra State Security Corporation Act 2010 are applicable to the security personnel. The contractor is responsible for making payment to the labourers and to make compliances of various provisions of law. The respondent Nos. 4 and 5 were engaged as contractors after following due procedure of law.

9. On 12.05.2020 interim directions were issued by this Court. Being aggrieved the respondent No. 2 had filed Special Leave Petition before the Supreme Court. In the Special Leave Petition an order of status quo was passed on 12.06.2020. Thereafter on 18.11.2021 further directions were issued by this Court. The petitioner preferred contempt petition for non compliance of interim orders of the High Court. On 15.12.2021 further directions were issued.

10. The learned senior counsel for the petitioner submits as follows :

(a) The members of the petitioner are deprived of the regularization and benefits of permanency despite the interim orders. The interim orders of this Court as well as the Supreme Court are deliberately flouted by the respondents.

(b) The members of the petitioner are the employees of the respondent No. 2. They are under the control and supervision of the respondent No. 2. The contract of the respondent No. 2 with respondent Nos. 4 and 5 is a camouflage.

(c) The writ petition is being entertained since 2020 and interim orders were passed considering exceptional circumstances. Though normally there would be alternate remedy, this Court has ample power to entertain petition and to grant the reliefs.

11. The learned senior counsel relies upon following judgments of the Supreme Court in support of his submissions.

(i) M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer and others

reported in 2023 LiveLaw (SC) 70.

(ii) Kanak (Smt) and another Vs. U.P. Avas Evam Vikas Parishad and others reported in (2003) 7 SCC 693.

(iii) Ganga Retreat & Towers Ltd. and another Vs. State of Rajasthan and others reported in (2003) 12 SCC 91.

12. The learned senior counsel for the respondent No. 2 and 3 opposes the petition and so do the remaining respondents. Following submissions are made by them.

(A) Disputed questions of facts are involved in the petition. There is no employer-employee relationship between the respondents and the members of the petitioner. They are not appointed by the trust at all.

(B) The claim of the petitioner is based upon vague and ambiguous pleadings.

(C) An alternate remedy is available to the petitioner of approaching the Industrial Tribunal. High Court cannot directly entertain the petition under Article 226 of the Constitution.

(D) The respondents have been since beginning raising objection regarding maintainability of the petition. Though interim orders are passed that would not preclude this Court from examining the preliminary objection.

(E) The respondents have maintained the record of payment of wages as contemplated by the interim orders.

(F) The petitioner has no locus to prosecute the present matter.

13. The learned counsel for the respondents rely on following judgments of the Supreme Court.

(I) Dena Nath and others Vs. National Fertilizers Limited reported in 1991 AIR SCW 3036.

(II) Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya P. Karmachari Sanghatana reported in 2009 AIR SCW 6104.

14. We have considered the rival submissions of the parties and the case laws cited by them. We propose to deal with the preliminary objection regarding maintainability of the petition. The present petition is filed for the relief of regularization, benefit of permanency and payment of wages. It is contended that the petitioner is espousing their cause. The petitioner has produced on record various charts showing the labour engaged by the respondent No. 2, the tenure of work and the dues. They are being engaged continuously. All the material facts pleaded in the petition are disputed by the respondents.

15. We are guided by the principles laid down by the Constitution Bench Judgment of the Supreme Court in the matter of Steel Authority of India Ltd. and

others Vs. National Union Water Front Workers and others reported in AIR 2001 SC 3527, relevant paragraph number 125 is quoted as below.

"123. We have used the expression industrial adjudicator by design as determination of the questions aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review."

16. The above Constitution Bench judgment is being followed consistently in every matter touching this subject. If we appreciate the pleadings and the submissions on record on the touch stone of the principles laid down by the Supreme Court, we find that the High Court in its writ jurisdiction under Article 226 of the Constitution of India cannot embark on an enquiry into the reliefs of regularization and permanency of services. The claim of the petitioner can be gone into by the appropriate Industrial Tribunal. An alternate efficacious remedy is available to the petitioner and its members. Bye-passing the same, present writ petition is filed which practice has been disapproved by the Supreme Court.

17. For awarding the benefits of permanency and regularization an enquiry into facts is necessary. We find that the pleadings of the petitioner are insufficient when individual centric relief is being claimed in the petition. The details of the members whose cause is espoused by the petitioner are not provided. They are not identified. There is no material on record to show that there were sanctioned vacant posts available with the respondent No. 2, due selection process of law was followed, there was contract of service and duration of service.

18. There is no material on record to show that the contract between the respondent No. 2 on one hand and respondent Nos. 4 and 5 on the other hand was a camouflage. No material is placed on record to demonstrate the control, supervision of the respondent No. 2 over the members of the petitioner. There is absolutely nothing on record to show that the wages were ever paid by the respondent No. 2 directly to the members of the petitioner. It appears that the contractors were engaged by the respondent No. 2 to outsource the services. There is no evidence on record to show that the respondent/temple trust was employer and under obligation to comply with the service conditions. Under these facts and circumstances, we cannot exercise jurisdiction under Article 226 of the Constitution of India to grant relief of permanency and regularization.

19. The learned senior counsel for the petitioner firstly relied upon the judgment of the Supreme Court in the case of M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer and others (cited supra) specifically para Nos. 4, 5, 6 and 8 to buttress the submissions that there is difference between maintainability and entertainability. On the basis of the principle laid down therein he would submit that availability of alternate remedy does not operate as an absolute bar to the maintainability of the writ petition. It is a rule of policy, convenience and

discretion rather than rule of law. We have already entertained the present writ petition on merits rather aborting it on the maintainability. Definitely the matter does not rest only on questions of law. We have examined the matter on merits and found that no case is made out to grant the relief to the petitioner.

20. Reliance is placed on the judgment of the Supreme Court in the case of Kanak (Smt) and another Vs. U.P. Avas Evam Vikas Parishad and others (cited supra). Paragraph Nos. 25, 29 to 31 were pointed out to fortify the submission that once the matter was entertained and argued on merits, it would be too late in the day to contend that the petitioner should have availed the alternate remedy. We are of the considered opinion that the said judgment is not applicable to the case in hand because we have not shut down the doors of the petitioner on the ground of maintainability. We have examined the matter on merits and found that the petitioner is not entitled to the reliefs claimed in the petition.

21. It is a matter of record that after hearing the matter on merits the learned Senior Advocate for the petitioner sought time to take instructions whether it wanted to prosecute any remedy before the Industrial Tribunal for regularization and benefits of permanency. On instructions it was submitted on the next date that his client wanted an adjudication on merits by this Court only. Therefore, we have considered the matter on merits.

22. Lastly, the learned senior counsel for the petitioner relied upon the judgment of the Supreme Court in the case of Ganga Retreat & Towers Ltd. and another Vs. State of Rajasthan and others (cited supra) and our attention was invited to paragraph No. 18 of the judgment to buttress the submission that alternate remedy was not an efficacious one and especially when the matter was pending for long time and it was being entertained by the High Court, albeit wrongly. With due respect, we hold that ratio is not applicable to the case in hand. We have already considered the matter on merits instead of relegating the petitioner to the alternate remedy.

23. Per contra, learned senior counsel for the respondent Nos. 2 and 3 relied upon the judgment of the Supreme Court in the case of Dena Nath and others Vs. National Fertilizers Limited (cited supra) especially paragraph Nos. 13, 20 to 22. The question before the Supreme Court was that if the principal employer has no registration under the Act of 1970 and the contractor has also no licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 whether the persons appointed by the principal employer through contractor would be deemed to be the direct employees of the principal employer or not. It was held that High Court under Article 226 of the Constitution of India cannot issue any mandamus to treat the labourers as direct employees of the principal employer. If there is violation of any of the provisions of the Act, then the penal consequences would follow. In our considered view this judgment is applicable to our case.

24. The learned senior counsel for the respondents further relied upon the judgment of the Supreme Court in the case of Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya P. Karmachari Sanghatana (cited supra) to buttress the submission that only recognized union can espouse the cause of the affected employees for that purpose paragraph Nos. 36 to 38 are referred to. Though it was argued that the petitioner was not recognized under the provisions of the MRTU and PULP Act, the respondents have not taken such plea in the reply. This has not been a fact in issue. We have already examined the matter on merits on other facts in issue. Therefore, we do not propose to go into the plea canvassed by the respondents.

25. The respondents further relied upon the judgment of the Supreme Court in the case of Ganga Retreat & Towers Ltd. And another Vs. State of Rajasthan and others (cited supra) and more particularly paragraph Nos. 4.1 to 4.4, 4.7 and 4.8. In the said matter the respondents/workmen had filed proceedings before the Labour Court and they were declared to be employees of the contractor. On their appeal, the Industrial Tribunal held that they became employees of the principal employer automatically. Thereafter matter travelled to the High Court and then to the Supreme Court. In the present matter the facts are distinguishable. The petitioner has directly approached the High Court. We have already examined the matter on merits and found that the petitioner is not entitled to any relief.

26. For the reasons recorded above, we do not find any merit in the writ petition and, therefore it is dismissed. Rule is discharged. There shall be no order as to costs.