

(2013) 02 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13619 of 2012 (O and M)

Union of India and Another

APPELLANT

Vs

Ram Pal and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 14, 141, 142, 16, 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1), 12

Citation : (2014) 140 FLR 934 : (2013) LabIC 3552 : (2014) 1 LLN 792 : (2013) 3 SCT 220

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J.; Augustine George Masih, J

Bench : Full Bench

Advocate : Ashwinie Kumar Bansal, for the Appellant; Amarjeet Singh, Advocate for the Respondents No. 1 and 2 in CWP-13619-2012 and Mr. P.M. Kansal, Advocate for the Respondents No. 1 and 2 in CWP-783-2013, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, C.J.—As identical questions of law are involved in both the above cases, they are disposed of by one single order. For facility of reference, the facts are noticed from CWP-783-2013. By means of present writ petition filed under Article 226 of the Constitution of India, the petitioners, namely, Union of India and Commissioner of Customs, The Mall, Amritsar seek judicial review of the orders dated 7.8.2012 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in Original Application which was preferred by the respondents herein u/s 19 of the Administrative Tribunals Act, 1985 (hereinafter after referred to as "the Act").

2. The respondents had filed the said OA challenging the action of the petitioners herein in treating them as contractor's employees. As per the respondents, though they were initially directly engaged by the petitioners herein, later on, they were switched over to unlicensed contractor and after some time to a licensed contractor. In this manner, they were sought to be made the

contractor's employee instead of the direct employees of the petitioners which was challenged as impermissible. The respondents had argued that the case was covered by another judgment of the Tribunal passed on 14.8.2002 in OA No. 800/CH/2001 titled as Kiran Pal and others v. Union of India and others, which was upheld by this Court on 24.5.2003 and thereafter by the Supreme Court on 20.4.2010. No doubt, the SLP against the aforesaid judgment was dismissed, but it was dismissal in limine. The Tribunal has accepted the plea of the respondents and allowed the OA on the ground that matter stands covered by the judgment in Kiran Pal's case (supra).

3. Plea raised by the petitioners before the Tribunal was that these respondents were engaged through the contractor for the purpose of cleaning/sweeping work in terms of Guidelines dated 25.9.1990 issued by the Central Board of Excise & Customs. As per these instructions, the respondents were permitted to outsource the work through the contractor, as there were no regular posts created or sanctioned, which was also provided in the guidelines dated 10.3.2004. It was also submitted that each work was for 89 days with break of 2-3 days. The said labour contractor got himself registered with the Ministry of Labour, Government of India in December-2004 and the payments to the respondents were made through the contractor and not directly through the petitioners. That contract continued up to 2006 whereafter work was awarded to some other contractor, namely, M/s Terrier Utility Services Private Limited, Chandigarh and it is this contractor which took over the services of the respondents herein. A specific stand was taken by the petitioners that they never engaged the respondents on daily-wage basis as alleged by these respondents and, therefore, they were not the contract employees of the petitioners. It was, thus, argued that the judgment in Kiran Pal's case (supra) was not applicable to the facts and circumstances of the present case. On that basis, the submission of the petitioners before the Tribunal was that the case was covered by the judgment dated 31.1.2012 of a co-ordinate Bench of the Tribunal given in OA No. 240/PB/2011 titled as Balwinder Singh and others v. Union of India and others.

4. The impugned decision of the Tribunal reveals that it has come to the conclusion that the respondents were initially appointed by the petitioners herein directly. For this finding, the Tribunal relied upon the attendance reports of the daily-wagers/casual labours duly signed by the Superintendent (Admn.) on 6.8.2003, 4.7.2003 and 8.1.2004 which were filed by the respondents as Annexures A-4, A-5 and A-6, respectively. The Tribunal observed that the petitioners had not placed on record any document to rebut the aforesaid evidence produced by the respondents and had simply denied the contention raised by the respondents. On that basis, in view of the Tribunal, it is the judgment in Kiran Pal (supra) which was applicable and not Balwinder Singh (supra) where the employees were the direct employees engaged from the very beginning through the registered contractor.

5. It is clear from the aforesaid discussion that in Kiran Pal (supra), the facts

were that the employees were initially engaged by the principal employer directly, but thereafter their services were taken over by the contractor and, in this manner, it was given a colour of contract labour. Therefore, notwithstanding the Government of India instructions dated 25.9.1990 that casual labour could not have been engaged, were of no avail. The Division Bench while affirming the order of the Tribunal in Kiran Pal (supra) held that the so called contract was a mere camouflage and a sham and the employees were the direct employees of the Government and they could not have been denied their proper status. After taking note of these facts, this Court gave directions in the following manner:

We have heard Shri Sanjay Goyal and carefully perused the record. In our opinion, the findings recorded by the Tribunal on the nature of employment of respondent Nos. 1 to 21 and their right to seek regularization does not suffer from any error of law warranting interference by this Court under Article 226 of the Constitution of India. Indeed, it is not the pleaded case of the petitioners that the so-called contractor had obtained license u/s 12 of the 1970 Act and he had supplied labour in accordance with the provisions of the said Act. Therefore, the view taken by the Tribunal that the so-called contractor was not the employer of respondents No. 1 to 21 merits our approval.

Once it is held that respondents Nos. 1 to 21 were not the employees of the contractor and that the instructions issued by the Government of India were not applicable to them, the direction given by the Tribunal for consideration of their cases for regularization as and when petitioners fill up the vacant posts or against additional posts which may be created by the department cannot be faulted.

Following facts emerge from the aforesaid decision in Kiran Pal (supra):

- (a) Initially appointment was with the principal employer and later on it was shown through contractor which was a mere camouflage and the workers were the direct employees of the department;
- (b) The so called contractor was unregistered contractor who had not obtained any licence u/s 12 of the Contract Labour (Regulation and Abolition Act), 1970;
- (c) The instructions dated 25.9.1990 were not applicable.
- (d) Even if the petitioners had engaged them on daily-rate basis contrary to the aforesaid instructions, it was for the Government to take suitable action against the officials who violated these instructions. As far as the employees are concerned, they were employed on daily-wage basis and so long as they had been engaged, they had to be treated as such.
- (e) As a consequence, the direction of the Tribunal for consideration of their cases for regularization as and when petitioners fill up the vacant posts or against additional posts which may be created by the department, cannot be faulted with.

6. We now revert back to the case at hand. Challenging the order of the Tribunal, the learned counsel for Union of India has made two fold submission:

(i) a Division Bench of this Court in a bunch of writ petitions with lead case CWP No. 12472-CAT-2006 Union of India and others v. Ramesh Singh, etc., decided on 2.12.2009 had taken a contrary view. The judgment in Kiran Pal (supra) was specifically noted by the Division Bench, but it decided to follow the dicta and mandate laid down by the Constitution Bench of the apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . It was submitted 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 SAIL (supra). It was within the exclusive domain of appropriate government under the Contract Labour Prohibition Act;

(ii) even if such persons are treated as engaged on daily-wage basis, in view of the judgment of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, there could not have been any direction to the principal employer for regularisation.

7. When the matter came up for hearing on 16.1.2013, taking note of the contrary view in Kiran Pal (supra) on the one hand and in Ramesh Singh (supra) on the other, the matter was referred for decision to the Full Bench, passing the following short order:

It is contended by learned counsel for the petitioners that the Tribunal has relied upon the judgment of this Court passed in Civil Writ Petition No. 7983-CAT of 2003 titled as Union of India and others v. Kiran Pal and others on 23.05.2003 which is no longer good law in view of Constitutional Bench judgment in case Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . Learned counsel has further submitted that following the judgment in Steel Authority of India Ltd. Case (supra), another Division Bench of this Court in Civil Writ Petition No. 12472-CAT of 2006 titled as Union of India and others v. Ramesh Singh and another decided on 02.12.2009 has taken a contrary view.

Issue notice of motion to the respondents returnable by 08.02.2013.

We find that different Division Benches are taking different views in these matters inasmuch as some Division Benches are following the judgment in case Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., while some other Division Benches are following the judgment in case Union of India and others v. Kiran Pal and others Civil Writ Petition No. 7983-CAT of 2003 decided on 23.05.2003. In these circumstances, it is necessary to set the controversy at rest by referring the matter to a larger Bench. On the next date of hearing, this matter shall be taken up by the Full Bench.

In the meantime, there shall be stay of the impugned judgment.

8. We have accordingly, heard the learned counsel for the parties at length. They agreed that the matter be finally decided by the Full Bench itself.

9. We have already discussed the decision in *Kiran Pal* (supra). In order to appreciate the matter in proper perspective, it will be necessary to discuss the judgment of this Court dated 2.12.2009 in *Ramesh Singh* (supra) as well. In that case also, the matter originated from the Central Administrative Tribunal and applicants therein were engaged in the office of Superintendent, City Range, Customs and Central Excise, Amritsar. A direction was sought to permit the applicants to continue on daily-wage basis and to regularise them against the vacancies against which they were working. The workers were being paid wages through contractor. The directions were given by the Tribunal based on its earlier order in *Kiran Pal* (supra). In the writ petition preferred against that order, the argument of the Union of India was that even when the Tribunal's judgment in *Kiran Pal* (supra) was affirmed by the High Court, attention of the Court was not drawn to the Constitutional Bench judgment of the Supreme Court in *SAIL* (supra).

10. 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(1) 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 also 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.

11. 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).

12. There is yet another reason for setting aside the order of the Tribunal. Following the decision in Kiran Pal (supra), the direction given is to regularise the respondents herein. Even if we presume that introducing the contractor in between is a camouflage (though such aspect can be raised only by means of industrial dispute and can be adjudicated upon by the Industrial Tribunal, at the most) it would mean that respondents are employees of the petitioners.

However, they are engaged only on daily-wage basis. It would not follow automatically that they are entitled to regularisation as well. These directions are impermissible. It is not permissible for this Court or for the CAT to either give directions for framing of scheme for regularization or to create supernumerary posts. The law in this regard stands settled by the 7-Member Bench of the Supreme Court in Uma Devi's case (supra). Again, in a recent judgment in the case of State of Rajasthan and Others Vs. Daya Lal and Others, the Supreme Court has reemphasized that the High Courts will not give any direction for creation of posts or to frame a scheme for regularization and such a direction can only be given by the Supreme Court in its powers under Articles 142 of the Constitution. This is so declared in the following manner by the Supreme Court in that case:-

8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not

working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

The nature of binding precedent of Uma Devi's case (supra) is impressed upon by the Supreme Court much strongly in the subsequent judgment in the case of Official Liquidator Vs. Dayanand and Others, in the following words:-

57. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka v. Uma Devi (supra) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., Gangadhar Pillai Vs. Siemens Ltd., , Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another,], Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, However, in U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, (6) Recent Apex Judgments (R.A.J.) 64 : 2007 (11) SCC 92] on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,

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70. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to

decide as to which of the judgment lay down the correct law and which one should be followed. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

71. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in *U.P. State Electricity Board v. Pooran Chandra Pandey* (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial for as nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

We, thus, hold that the decision rendered in *Kiran Pal* (supra) does not lay down the correct law. As a consequence, we allow the writ petitions and quash the impugned orders passed by the Tribunal. However, we make it clear that respondents would be at liberty to approach the competent authority under the Contract Labour (Regulation and Abolition Act), 1970. They will also be at liberty to raise industrial dispute in case their contention is that the contracts in question are camouflage. There shall, however, be no order as to costs.