

Yeshvir Singh Vs Union Of India And Ors

Court: Delhi High Court

Date of Decision: Nov. 21, 2017

Acts Referred: Contract Labour (Regulation and Abolition) Act, 1970 " Section 5, 10, 21

Hon'ble Judges: Hima Kohli, J; Rekha Palli, J

Bench: Division Bench

Advocate: Jasbir Singh Malik, Roshan Lal Goel

Final Decision: Allowed

Judgement

C.M. No.7042/2017 (by the petitioner for direction u/s 151 of CPC)

The application is disposed of, as not pressed.

W.P.(C) 1570/2017

1. The present writ petition assails the order dated 19.11.2016, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. no.

119/2013, whereby the petitioner's Transfer Application has been dismissed with liberty given to him and the other applicants therein to approach

the appropriate legal forum.

2. The petitioner, alongwith 17 others had filed a writ petition in this court, registered as W.P.(C) 1978/2008, seeking inter alia, issuance of a writ of

mandamus for directing the respondents to give effect to the Ministry of Labour Notification dated 31.07.2002, for absorption of their service with all

consequential benefits including grant of the same pay scale to them as was being granted to their counterparts working in the CPWD. The said

petition was transferred to the Tribunal and has been dismissed by the impugned order.

3. The brief facts of the case, as emerge from the records, are that the petitioner alongwith other similarly placed persons was appointed by the

CPWD as a helper/wireman in July 1988, on a contract basis, through different contractors. After having worked for almost 10 years on contract

basis in the CPWD, the petitioner, along with other similarly placed persons approached this Court by way of W.P.(C) no. 4265/1998 titled,

"CPWD Karamchari Union (Regd.) and Ors. v. Union of India and Ors", seeking regular appointment/direct absorption by the CPWD as their

Principal Employer and alleging that the contract system under which they were working, was actually a camouflage and their contractor neither had

the requisite license, nor was he registered under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the Act").

It was also contended therein that no efforts were made by the respondents to issue a notification under Section 10 of the Act for abolishing the

contract labour system prevalent in the CPWD in respect of the nature of work being undertaken by the contract workers.

4. The petitioner and other similarly placed persons were granted ad interim protection in the captioned petition regarding their services. During the

pendency of the aforesaid petition, a Resolution dated 30.03.2000 was issued by the Government of India under Section 5 of the Act, whereby the

Central Advisory Contract Labour Board constituted a Committee to examine the issue of abolition of contract labour deployed in different

offices/establishments of the CPWD. In the wake of the constitution of the Committee, the aforesaid writ petition alongwith other connected writ

petition including W.P.(C) no. 4265/1998 were disposed of vide order dated 26.05.2000, with the following directions:

"1. The services of these contract workers shall not be substituted with other contract workers i.e. if the respondent require to employ

contract workers in the jobs assigned to these contract workers, then they will not replace the present contract workers with fresh contract

workers.

2. In case of contract with a particular contractor who has engaged these petitioners/contract workers, comes to an end the said contract

may be renewed and if that is not possible and the contract is given to some other contractor endeavour should be made to continue these

contract workers with the new contractor. It would be without prejudice to the respective stand of the parties before the appropriate

Government and their continuation would depend upon the decision taken by the Government to abolish or not to abolish the contract

labour system.

3. These directions shall not apply in those cases where the particular contract of maintenance etc., given by other establishment to the

CPWD earlier has ceased to operate with the result that CPWD is not having the work/contract any longer. In those cases it would be open

to the CPWD to disengage such contract workers as not required any longer in the absence of work/job/particular activity with the CPWD.

4. If the decision is taken to abolish the contract labour in particular job/work/process in any of the offices/establishments of CPWD (as per

the terms of reference contained in Resolution dated 30th March, 2000), as per the judgment of the Supreme Court in Air India Statutory

Corporation (supra) such contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefits in terms

of the aforesaid judgment. In case the decision of the "appropriate Govt." is not to abolish contract labour system in any of the

works/jobs/process in any offices/establishments of CPWD the effect of that would be that contract labour system is permissible and in that

eventuality CPWD shall have the right to deal with these contract workers in any manner it deems fit.

5. Such contract labours who are still working shall be paid their wages regularly as per the provisions of Section 21 of the Act and in

those cases where the contractor fails to make payment of wages, it shall be the responsibility of the CPWD as principle employer to make

the payment of wages.

6. The exercise undertaken by the "appropriate Govt." u/s. 10 of the Act, starting with the formation of a Committee by Resolution dated

30th March, 2000 should be completed as expeditiously as possible and in any case within a period of six months from today.

There shall be no order as to costs.

5. The judgment dated 26.05.2000 passed by in the connected petitions was challenged by the petitioners/workmen by filing an intra court appeal

(LPA No. 388/2000) which was dismissed vide order dated 22.08.2009 and the same was not carried in appeal to the Supreme Court. Thus, the

judgment of the learned Single Judge dated 26.05.2000 issuing directions to the respondents to examine the issue of abolition of contract labour in

various works/jobs in the CPWD attained finality.

6. While the captioned LPA was pending before this Court, the Central Advisory Contract Labour Board recommended prohibition of contract labour

in 20 categories of jobs and the Government accepted the said recommendations in respect of 15 out of the 20 categories and accordingly, the

Ministry of Labour i.e. respondent no.2 issued a Notification dated 31.07.2002. Consequently the Government of India through the Director General

(Works), CPWD circulated this Notification regarding prohibition of Contract Labour in specific categories of work of offices/establishments of the

CPWD for taking further appropriate action in the matter.

7. Since the category of "wireman" against which the petitioner was working, was covered under this Notification, considering himself to be

eligible for being absorbed by the CPWD, he served a legal notice dated 02.02.2008 upon the Director General (Works), CPWD but received no reply

thereto. In these circumstances, the petitioner alongwith four other similarly placed persons approached this Court by way of W.P.(C) No.1978/2008,

seeking the following reliefs:-

“(a) Issue a writ of mandamus directing the Respondents to give effect to the Ministry of Labour notification no. SO 813(E) dated

31.07.2002 for the purpose of absorption of services of the Petitioners with all consequential benefits inclusive of absorption/regularization

from the date of notification;

(b) Issue a writ of mandamus directing the Respondents to grant the same pay scale to the Petitioner, which is being granted to the

counterparts employees in CPWD.

8. It is claimed by the petitioner that while his aforesaid writ petition was pending before this Court, he was directed by the Assistant Engineer not to

report for any further for duty and was orally told that his services stood terminated. As a result, the petitioner filed a contempt petition, registered

C.P.(Civil) No.365/2013, which is stated to be pending before the roster Bench.

9. When the petitioner's aforesaid writ petition came up for consideration on 23.10.2013, the learned Single Judge upon noticing the fact that he

was an employee of the CPWD, came to the conclusion that this Court did not have the jurisdiction to entertain the petition as the petitioner has raised

disputes relating to his employment with the CPWD with respect to service conditions, which fell within the jurisdiction of the Central Administrative

Tribunal. Accordingly, vide order dated 23.10.2013, the writ petition was transferred to the Central Administrative Tribunal, Principal Bench, New

Delhi and the parties were directed to appear before the Registrar, Central Administrative Tribunal, Principal Bench, New Delhi on 03.12.2013. Upon

transfer to the Tribunal, the writ petition was numbered as T.A. No.119/2013.

10. When the petitioner's T.A. came up for hearing before the Tribunal, it was dismissed by the impugned order by holding that he and the other

applicants therein were seeking absorption in terms of the judgment dated 26.05.2000 of this Court and the Tribunal could not enforce the said

judgment. While dismissing the T.A., the Tribunal granted liberty to the petitioner and other applicant to approach the appropriate legal forum for

agitating their rights. In this context it is appropriate to reproduce the observations made by the Tribunal in para 8 of the impugned order which reads

as under:-

“8. The fundamental issue, which draws our attention, is that the applicants are seeking absorption in CPWD in terms of the judgment of

the Hon'ble High Court of Delhi. If their prayer for absorption is not being considered by the respondents, they are required to

approach the Hon'ble High Court of Delhi only in contempt or otherwise with a prayer to get the said judgment implemented. This

Tribunal can only enforce its own orders/judgments and not of other courts.

Aggrieved by the dismissal of their T.A. by the Tribunal, the petitioner has preferred the present petition.

11. Mr. Jasbir Singh Malik, learned counsel for the petitioner urges before us that once this Court had itself transferred the writ petition filed by the

petitioner to the Tribunal vide order dated 23.10.2013, there was no occasion for the Tribunal to have dismissed the T.A. He submits that the Tribunal

failed to appreciate that the petitioner was not merely seeking compliance of the order dated 26.05.2000, passed in W.P.(C) No.4265/1998, but was

also seeking a direction to the respondents to give effect to the Ministry of Labour Notification dated 31.07.2002, for the purpose of absorption of his

service alongwith all consequential benefits and he had also prayed for grant of the same pay scale as being granted to his counterpart employees in

the CPWD.

12. Mr. Malik further contends that the failure on the part of the Tribunal to adjudicate the issues raised by him in his T.A., has left the petitioner

remediless. He therefore contends that the Tribunal has failed to appreciate that upon transfer from this Court, the petitioner's claim ought to have

been considered and decided on merits by the Tribunal.

11. Per contra, while supporting the impugned judgment of the Tribunal, learned counsel for the respondents contends that since the petitioner was an

employee of a contractor, he could not be termed as a CPWD employee. He further submits that the petitioner was never offered or appointed on any

kind of post by the CPWD and therefore, the Notification dated 31.07.2002, under which he is seeking absorption, which was meant only for contract

labour, was not applicable to him as he was not a contract labour, but an employee of the contractor. He, thus, prays for dismissal of the petition.

12. We have considered the rival submissions of the parties and with their assistance, perused the record. In our view, despite noticing the specific

prayer of the petitioner seeking a direction to the respondents to give effect to their Notification dated 31.07.2002, for the purpose of absorbing

petitioner's services, the Tribunal dismissed the T.A., without appreciating the fact that while transferring the matter to the Tribunal this Court had

already held that the said relief could be considered and granted only by the Tribunal.

13. We find it strange that the Tribunal has dismissed the T.A. even after noticing the fact that vide Notification dated 31.07.2002, the respondents

had prohibited engagement of Contract Labours in certain disciplines including the category of wireman, to which the petitioner belongs. The

Tribunal also overlooked the fact that the judgment dated 26.05.2000 of this Court had made it very clear that in such an event, a decision was taken

to abolish the Contract Labour in the particular job/work/process and in that circumstance, those contract workers would be entitled to be absorbed in

the CPWD. In our view, merely because the right of the petitioner to seek absorption in accordance with the terms of the Notification dated

31.07.2002 is founded on an earlier order passed by this Court, would not be a ground to hold that the petitioner was seeking enforcement of the

orders passed by the High Court. Having ignored the specific prayer made by the petitioner whereby he was seeking enforcement of the Notification

dated 31.07.2002, the Tribunal has, erroneously dismissed the T.A. as not being maintainable before it.

14. Even otherwise, the Tribunal has overlooked the fact that the judgment of the High Court was delivered on 26.05.2000 and while allowing the writ

petition, liberty was granted to the respondents to take a considered decision regarding abolishment of contract labourers in different jobs/processes in

the offices of CPWD and take consequent action accordingly. Thereafter, the respondents had admittedly issued a Notification dated 31.07.2002 and

it is this Notification in respect whereof, the petitioner was seeking enforcement. At no point was the petitioner seeking enforcement of the judgment

dated 26.05.2000 passed by the High Court, which in fact stood substantially implemented upon issuance of the aforesaid Notification.

15. In view of the above, the order of the Tribunal is wholly unsustainable and is accordingly set aside. The T.A. is restored to its original position and

the matter is remanded back to the Tribunal for adjudication on merits.

16. The parties are directed to appear before the Registrar, Central Administrative Tribunal, Principal Bench, New Delhi on 04.01.2018, for

completion of pleading and further proceedings.

17. The writ petition is allowed in the above terms, with no order as to costs.