(1999) 03 MAD CK 0011

Madras High Court

Case No: Writ Petition No. 4710 of 1999

G. Radhakrishnan	APPELLANT
Vs	
The Manager (P and A) Oil and Natural Gas Corporation Ltd. SRBC	RESPONDENT

Date of Decision: March 31, 1999

Acts Referred:

- Constitution of India, 1950 - Article 14
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10(1), 2
- Industrial Disputes Act, 1947 - Section 2

Hon'ble Judges: P.D. Dinakaran, J

Bench: Single Bench

Advocate: K. Chandra for D. Hariparanthaman, for the Appellant; P. Rathinadurai, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.D. Dinakaran, J.
Petitioners seeks a Writ of certiorarified Mandamus, to call for the records relating to the order dated 18-2-1999,

made in M(ll)/SCRO/E-III, retiring the Petitioner from Respondent''s service on 31-3-1999, on reaching his age of 58 years and to direct the

Respondents to continue to employ the Petitioner upto 60 years.

2. According to Mr. K. Chandru, learned senior counsel for the Petitioner, the Petitioner joined as Security Supervisor in the Respondent

Corporation in the year 1983 as a contract labourer, through a Contractor called That Security. Thereafter, the Petitioner continued as a contract

labourer from the year 1987 through another contractor viz. Priyadharshini Indira Gandhi Security Services Soceity. However, by order dated 21-

1-1988 of the Respondent Corporation, the Petitioner was employed as Security supervisor directly by the Respondent Corporation and thus the

Petitioner continues to be employed as Security Supervisor in the Respondent Corporation till date. The Petitioner was served with an order

dated, 18-2-1999 of the Respondent which is impugned in the above writ petition, informing him that his term of employment is expiring and he will

be relieved on 31-3-1999.

3. Mr. K. Chandru, learned senior counsel for the Petitioner contends that as per the notification of the Central Government dated 9-12-1976 the

employment of contract labourers for sweeping cleaning, dusting and watching of the buildings, owned or occupied by the establishments are

prohibited. Once the employment of engaging contract labourers for watching of the buildings is prohibited, it is implied that the principal employer

is under a statutory obligation to absorb the contract labourers and the linkage between the principal employer and the contract labourers stood

snapped and consequently a direct relationship of employer and employee stood restored between the principal employer and the contract

labourer as held by the Apex Court in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], at 440.

4. Inviting my attention to the facts and circumstances of the present case that the Respondent Corporation continues to engage Petitioner as

contract labourer in view of the undisputed fact of the continuous workload for the security supervisors, Mr K. Chandru, learned senior counsel for

the Petitioner contends that the Petitioner is required to be absorbed in the establishment of the Respondent even though the service rules of the

Respondent do not provide for payment of any specific scale of pay to such contract labourers as regular employees. It is contended that the

Respondent Corporation cannot deny the legitimate right conferred on the Petitioner under the Contract Labour (Regulation and Abolition) Act,

1970 merely by contending that they were engaged on term basis on certain specified conditions that (i) the Petitioner''s engagement is purely on

temporary basis and (ii) the Standing Orders of the Respondent Corporation is not applicable, but on the other hand the establishment should take

such steps as are necessary to prescribe such scale of pay.

5. Mr. K. Chandru, learned senior counsel for the Petitioner contends that when the Petitioner is admittedly engaged to discharge the duties of a

guard, he is entitled to be retained in the services till the afternoon of the last day of the month in which he attains the age of 60 years as per Rule

26 of the Service Rules of the Respondent Corporation. In any event, it is contended that since the Respondent proposed to relieve the Petitioner

from service in spite of their own office report dated 23-6-1998, wherein it is notified that the Board of Directors in its 42nd Meeting, held on 1-6-

1998, has approved the retirement age of below Board level employees in the Respondent Corporation from 58 to 60 years with immediate effect,

the Petitioner is entitled to seek the relief as prayed for in the above writ petition.

6. Mr. P. Rathinadurai, learned Counsel for the Respondent Corporation contends that the Petitioner cannot be considered as a workman as per

Section 2(b) of the Contract Labour (Regulation and Abolition) Act, 1970 as he is not continued to be the contract labourer through any

contractor and therefore the Petitioner is not entitled to seek any relief under the said Act; that the writ petition is not maintainable for nonjoinder of

the Board of Directors, of the Respondent Corporation, which alone is competent to permit the Petitioner to employ the Petitioner continuously till

he reaches the age of 60 years; since it is not in dispute that the Petitioner was appointed only on term basis the Respondent Corporation is entitled

to relieve the Petitioner on the expiry of the term viz. on 31-3-1999. In any event, the retirement of the Petitioner on attaining the age of 58 years

shall not amount to retrenchment even as per Section 2(oo)(b) of the Industrial Disputes Act as the Respondent Corporation have taken a uniform

decision to relieve the security staff engaged by the Respondent Corporation on attaining the superannuation at the age of 58 years; and in any

event, unless and otherwise the services of the Petitioner is regularised as an employee of the Respondent Corporation, the Petitioner is not entitled

to seek for a direction to the Respondent Corporation to continue him in service till he attains the age of 60 years. Even as per the Notification

issued by the Government of India dated 8-9-1994, u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 the security guards

are not notified for prohibiting their employment as contract labourers and therefore the Petitioner is not entitled to contend that the Respondent

Corporation cannot continue the Petitioner as a contract labourer.

7. I have given my careful consideration to the submissions of both sides 8 It is not in dispute that the Petitioner was originally engaged as security

supervisor as a contract labourer and thereafter by order dated 21-1-1988 of the Respondent Corporation the Petitioner was employed, on term

basis, as security supervisor directly by the Respondent Corporation and thus continues to be security supervisor from 13-1-1988 to 29-2-1998.

However, there was no subsequent orders even for the term basis appointment in writing, but the fact remains that the Petitioner is engaged as a

security supervisor continuously till date. It is in this regard, I am obliged to refer to the notification of the Government of India, issued u/s 10(1) of

the Contract Labour (Regulation and Abolition) Act, 1970 which reads as follows:

NOTIFICATON

No. S.O.... In exercise of the powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulaion) and Abolition Act, 1970

(37 of 1970), the Central Government, after consultation with the Central Advisory Contract Labour Board, hereby prohibits the employment of

contract labour in various works, specified in the Schedule annexed hereto, in the establishments of the Oil and Natural Gas Commission in the

country.

SCHEDULE

1. Fire Fighting (Fire Supervisors. Fireman, Fire Technician)

2. Typists

3. Clerks (including Accounts Clerks)

4. Steno Typists / Stenographers

5. Data Operators

6. Computer Operators

7. Store Keepers

8. Boiler Operators

9. Telephone Operators

10. Attendants/Helpers/Peons

11. Instrumentation Technician & Helpers

12. Radio Operators

13. Drivers (wherever driving work is not done by hiring vehicles on contract but by the Oil and Natural Gas Commission)

Sd/-

(S.S. Sharma)

Director General (Labour Welfare) Joint Secretary to the Government of India

A reading of the above notification makes it clear that the Respondent Corporation is prohibited to employ any contract labourer for watching of

the buildings, owned or occupied by the Respondent Corporation. Therefore, the mere absence of including the security guard in the notification

dated 8-9-1994 by itself would not take away the right conferred on the Petitioner under the Contract Labour (Regulation and Abolition) Act,

1970.

9. The next question that arise for my consideration is whether the Petitioner is a workman within the definition of Section 2(b) of the Contract

Labour (Regulation and Abolition) Act, 1970, which reads as follows:

a workman shall be deemed to be employed as ""contract labour"" in or in connection with the when he is hired in or in connection work of an

establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal

employer.

No doubt, to treat the Petitioner as workman for the purposes of Section 2(b) of the Act, he should have been engaged through a contractor.

Though the Petitioner was originally engaged through a contractor but subsequently due to the abolition of contract labour system, the Respondent

Corporation started engaging the Petitioner directly on term basis.

10. It is in this regard I am obliged to refer to the decision in Air India Statutory Corporation, etc. Vs. United Labour Union and others

[overruled], at 440, wherein the Apex Court held as follows:

In this behalf, it is necessary to recapitulate that on abolition of the contract labour system by necessary implication, the principal employer is under

statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship

stood restored between the principal employer and the contract labour as its employees considered from this perspective all the workmen in the

respective services working on contract labour are required to be absorbed in the establishment of the Appellant. Though there exists no specific

scale of pay to be paid as regular employees it is for the establisment to take such step as are necessary to prescribe scale of pay like class ''D''

emploees. There is no impediment in the way of the Appellants to absorb them in the last grade, namely Grade IV employees on regular basis.

Therefore, in view of the abolition of the contract labour system for engaging any workman for watching the building, owned or occupied by the

Respondent Corporation, the Respondent Corporation, by necessary implication, is under a statutory obligation to absorb the Petitioner as a

security supervisor. The mere fact that the Petitioner was subsequently not engaged by the Respondent Corporation after 1998 through a

contractor, would not disentitle the Petitioner to claim the benefits under the Contract Labour (Regulation and Abolition) Act, 1970 because as

observed by the Supreme Court, the linkage between the contractor and the employee stood snapped and direct relationship stood restored

between the principal employer and the contract labour as its employees, which enables the Petitioner to claim the benefits of the Act.

11. I am also unable to accept the argument of the learned Counsel for the Respondent that the Petitioner having accepted that the conditions

contained in the Standing Orders of the Respondent Corporation would not be applicable to him, he is not entitled to claim the benefits of the Act.

In my considered opinion, the said clause, viz. Clause (6) of the Standing Orders of the Respondent Corporation is unreasonable, unenforceable

and therefore, void as the same has been entered into between the Petitioner and the Respondent Corporation, who are not equal in bargaining

powers, particularly, at the time when the Petitioner was engaged as security supervisor on term basis, he was in search of employment. Therefore,

the said Clause 6 is, in my considered opinion, is arbitrary, unreasonable and violative of Article 14 of the Constitution of India and the

Respondents are not entitled to put forth the same against the Petitioner.

12. The mere failure of the Respondent Corporation to take such further steps to frame appropriate rules and regulations for the persons who have

been continuously engaged as security supervisors cannot be put against the Petitioner for claiming the benefits under the Contract Labour

(Regulation and Abolition) Act, 1970 particularly when the security guards employed in the Respondent corporation are entitled to work till they

attain 60 years as per Rule 26 of the Service Rules of the Respondent Corporation. Even assuming that the Petitioner is bound by the contract of

service, the same would be applicable only to the extent of the consolidated pay, to which the Petitioner has agreed, but it will not take away the

right of the Petitioner to continue in service till he attains the age 60 years as it has been extended to all the employees of the Respondent

Corporation under the order of the Respondent dated 23-6-1998 unless and until the Board of the Respondent Corporation makes any

amendment to that effect, even if any such amendment is made the same would have only prospective effect.

13. For all these reasons, the impugned order dated 18-2-1999 is hereby quashed and the Respondent corporation is directed to continue to

engage the Petitioner till the Petitioner attains the age of 60 years, of course, on the term of payment of consolidated pay, to which the Petitioner

has agreed to work on that basis till date. The writ petition is allowed. No costs. Connected W.M.P. No. 6808 of 1999 is also rejected.