

(2010) 06 DEL CK 0064

Delhi High Court

Case No: Writ Petition (C) 6562 of 2001

Prem Nath and Others

APPELLANT

Vs

Oil and Natural Gas Corporation
and Others

RESPONDENT

Date of Decision: June 1, 2010

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Section 2, 3

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Asha Jain Madan, Mukesh Jain and Sachin Sharma, for the Appellant; Gourab Banerji, ASG, Shreya Sharma, Syed Abdul Haseeb and Ratna Dhingra for R-1/ONGC and Atul Nanda, Rameeza Hakeem, Sugandha and Gaurav Gupta for R-3/UOI, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The 24 petitioners seek the relief of regularization of their services with the respondent ONGC with all consequential benefits and an order restraining the respondent ONGC from terminating their services and further a direction for payment to them equal wages as being paid by the respondent ONGC to the other regular employees. During the pendency of the petition, CM.No.1817/2006 was filed by the petitioners and by interim order dated 14th February, 2006 thereon, status quo was directed to be maintained in respect of the petitioners' employment. The said order has continued in force till now.

2. The petitioners joined service of respondent ONGC in the year 1984-86 at the Jwalamukhi Project of the respondent ONGC. It is the case of the petitioners that inspite of permanent and perennial nature of the work being taken from them, the

respondent ONGC engaged them on daily wage basis, as contingent employees. Reference is made to the Certified Standing Orders of the respondent ONGC with respect to the contingent workmen, providing that a workman who has put in not less than 180 days of attendance in any period of 12 consecutive months is required to be treated as a temporary workman and a temporary workman who has put in not less than 240 days and who possesses minimum qualification is "may be considered" for conversion as a regular employee. It is the case of the petitioners that in breach of the said Standing Orders, the respondent ONGC has neither treated the petitioners as temporary employees nor regularized their services. The petitioners claim to be having the requisite qualifications under the recruitment regulations of the respondent ONGC. It is further the case of the petitioners that the respondent ONGC was taking from the petitioners the same quantity and quality of work with same responsibilities, as being done by the regular employees, but not giving equal wages to the petitioners.

3. The respondent ONGC in the year 1987 also had attempted to terminate the services of the petitioners. A writ petition was then filed by some of the petitioners in the year 1987 in the High Court of Himachal Pradesh at Simla. In that writ petition also the relief claimed was of regularization of services and for equal wages as being paid to the regular employees of the respondent ONGC. Thus, the relief claimed by the petitioners in the earlier writ petition was the same as claimed in this writ petition.

4. Some of the petitioners and others similarly situated as them had in or about the year 1987 also raised an industrial dispute for grant of regular status to them. In the said industrial dispute a settlement was arrived at and where under the services of some of the others similarly situated as the petitioners were regularized and for the remaining it was agreed that they would be given preference at the time of recruitment for appointment against class III and IV post in an expeditious manner.

5. The Jwalamukhi Project in which the petitioners were initially engaged was completed in the year 1993.

6. Yet, some of the other petitioners who were then working at the Madhopur works of respondent ONGC, in or about 1993, fearing their termination, filed a writ petition in the High Court at Punjab and Haryana at Chandigarh. In the said writ petition also the relief of regularization of services was claimed.

7. The respondent ONGC opposed the writ petitions at Simla as well as at Chandigarh. The writ petition at Simla was disposed of vide order dated 21st September, 1993. It is recorded in the said order that it was the stand of the respondent ONGC that it had no work available to continue the petitioners; that it had sought information from other regions where the petitioners could be re-engaged but the same was not found possible. The High Court also noted that efforts had been made to explore whether the petitioners could be retained either

at the present place of posting or anywhere else but the court was satisfied with the explanation of respondent ONGC that it was not so possible. The writ petition was therefore dismissed and interim orders in the writ petition under which the petitioners were continuing vacated. It was however observed that if ever work was available with the respondent ONGC in northern region and the petitioners were found qualified for the same, preference would be given to them according to their seniority and job requirement.

8. The writ petition in the High Court at Chandigarh was also similarly dismissed. The petitioners preferred Special Leave Petitions to the Supreme Court which were also dismissed on 19th November, 1993.

9. It is the case of the petitioners that after the dismissal of the Special Leave Petitions, the appropriate Government on 8th September, 1994 issued notification u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibiting the employment of contract labour in certain works in the establishments of ONGC. It is the case of the petitioners that the issuance of the said notification conclusively proves that the jobs being performed by the petitioners are of permanent and perennial nature required to be got done through regular workers.

10. It is further the plea of the petitioners that though it was represented by the respondent ONGC before the High Court at Simla that there was no work available for the petitioners but the respondent ONGC continued to engage the petitioners without any break till the filing of the present petition, however as contingent worker only. It is thus contended that the defence taken before the Simla High Court of the respondent ONGC not having any work for the petitioners was false, taken with the malafide intention to defeat the petitioners' claims for regularization. The counsel for the petitioners has contended that the Simla High Court dismissed the writ petition solely on the ground that no work was available for the petitioners.

11. The petitioners first filed WP(C) D7385/2001 before the Supreme Court on 21st April, 2001. However, the said writ petition was dismissed as withdrawn on 8th May, 2001 with liberty to the petitioners to move this Court. Thereafter, the present petition came to be filed.

12. The petitioners citing the aforesaid two developments, since the dismissal of earlier two writ petitions, filed the present writ petition. It is also pleaded that the petitioners are being transferred from one place to another as regular employees. Notice of the writ petition was issued. Though the writ petition was also accompanied with an application for interim relief for restraining the respondent ONGC from terminating the services of the petitioners but no interim relief was granted to the petitioners till 14th February, 2006 as aforesaid. The writ petition remains at the stage of show cause notice only.

13. The respondent ONGC in the counter affidavit has inter alia stated that the petitioners have been engaged and deployed only in the Northern Region for doing

work on contingent basis. It is denied that the workmen were transferred as alleged. It is informed that re-deployment of the contingent workers from Madhopur to Jammu was only to provide an alternative job, otherwise their services are not inter transferable from one work centre of respondent ONGC to another and only an opportunity in special circumstances is given to work elsewhere. It is also denied that the work taken from the petitioners is of a permanent and perennial nature. It is pleaded that the petitioners were not engaged in accordance with regulations of the respondent ONGC; that in accordance with the settlement aforesaid as well as the Standing Order of the respondent ONGC, the contingent employees are considered for regular employment as and when vacancies arise in the Northern region. The respondent ONGC disputes that the petitioners are performing the same or equal work as the regular employees. It is pleaded that the work in the Northern region was mainly exploratory and thus temporary in nature and governed by the Petroleum Exploration License (PEL) granted to the respondent ONGC by the Government; the said licence for work in Jammu and Kashmir has lapsed in January, 2002 and the efforts for its re-grant have also not fructified; that the licence for Himachal Pradesh has expired in 2003; that besides the establishments in Jammu and Kashmir and Himachal Pradesh, the only other establishment in the Northern region is the store yard at Madhopur and which also is required to be wound up owing to the works in Jammu and Kashmir and Himachal Pradesh coming to an end. It is contended that the work of the respondent ONGC in the said region cannot be said to be of a perennial nature.

14. The first question which arises for adjudication is the maintainability of this writ petition in the face of the dismissal, of the earlier writ petitions claiming the same reliefs and of the SLP preferred to the Supreme Court against the orders of dismissal of earlier writ petitions. It is not in dispute that all the facts and circumstances except the two factors noted hereinabove were the same at the time of filing of the earlier writ petitions also. Thus, the only question remaining to be considered is whether the said two factors entitle the petitioners to re-litigate which otherwise has been held to be an abuse of the process of court.

15. One of the factors pleaded is the issuance of the notification under the Contract Labour (Regulation and Abolition) Act. No arguments on the said aspect have been addressed. Even otherwise the issuance of the said notification would not entitle the petitioners to re-litigate. The petitioners are not contract labour and in any case the only effect of such a notification is to prohibit the employment of contract labour in the operations mentioned therein. The said notification ipso facto does not regularize the services of the contract labour (see [Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others](#),

16. The second factor urged for re-litigation is the factum of the respondent ONGC, even after the dismissal of the earlier writ petitions and the SLP, continuing to engage the petitioners. There is no denial of the said fact in the counter affidavit of

the respondent ONGC. The only thing pleaded is that the licence for exploration was valid till the year 2002 and 2003 as aforesaid. From the same it appears that since the exploration licence of the respondent ONGC was renewed after the dismissal of the earlier writ petitions/SLPs in 1993-94, the respondent ONGC continued to engage the petitioners as contingent workers.

17. The petitioners have placed before this Court only the order of the High Court at Simla (and not the order dismissing the writ petition filed before the Chandigarh High Court). From a reading of the said order it cannot be said that the writ petition was dismissed only on the representation of the respondent ONGC of having no work for the petitioners. A reading of the said order conveys that the High Court then did not find any case for regularization in favour of the petitioners but on compassionate ground attempted absorption of the petitioners in the respondent ONGC but the said attempt was also given up on the court being satisfied of the respondent ONGC having no vacancy. The case then made out by the petitioners for regularization was the same as is being made now. When no case for regularization was found to have been made out then, no case for such regularization can be made out now. Moreover, if it is the case of the petitioners that the respondent ONGC had obtained the order of dismissal of the earlier writ petition by misrepresentation, the appropriate court to approach in this regard was the court to which misrepresentation had been made. This Court cannot allow the petitioners to re-litigate on the said ground.

18. The counsel for the petitioners in this regard has drawn attention to the order in the writ petition filed by the petitioners directly in the Supreme Court and in which order liberty was given to the petitioners to approach the Delhi High Court. The said liberty appears to have been given only on the basis of the statement of the counsel for the petitioners. Otherwise there does not appear to be any reason for the Supreme Court to of its own direct the petitioners to approach this Court.

19. The counsel for the petitioners has also sought to urge that the second round of writ petition is maintainable owing to the order aforesaid of the Supreme Court. I am unable to agree. From the order dated 8th May, 2001 of the Supreme Court dismissing the writ petition of the petitioners it is clear that the Supreme Court was not inclined to entertain the writ petition; the petitioners rather than facing the dismissal sought to withdraw the petition with liberty to approach this Court and which was granted. The respondent ONGC was not even represented then before the Supreme Court. The Supreme Court merely granted liberty, without going into the maintainability or otherwise of the proposed writ petition.

20. The counsel for the petitioners has sought to rely heavily on the report of the recommendation dated 24th July, 1998 of the Committee constituted by the respondent ONGC to go into the problems of the petitioners. The said Committee found requirement in the category of Class IV employees at the headquarter in Dehradun and ruled out retrenchment of the contingent employees. Though the

aforesaid report does appear to indicate that in 1998 the respondent ONGC did have work for the petitioners and the contingency for discharging the services of the petitioners had then not occurred but the fact remains that the same is but a report of the Committee. The authorities concerned of the ONGC do not appear to have accepted the said report. The decision to accept or not to accept the report was of the said authority and the report of the Committee was not final. The said fact also thus does not prevail upon me to hold the petitioners entitled to re-litigate.

21. There is yet another important aspect. The Constitution Bench of the Supreme Court has since in [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), dealt authoritatively with the powers of the court for regularization of employment. It has been held that the courts have no power to so grant the relief of regularization of services of persons engaged temporarily and on daily wage and without complying with the recruitment rules and regulations. The Supreme Court has further held that the courts, out of considerations of sympathy or injustice or inequity cannot impose such casual workmen on an organization through the backdoor of initial casual employment and in breach of the recruitment regulations of the organization, for howsoever long they may have worked with the organization.

22. It was as such enquired from the counsel for the petitioners at the outset only as to how in view of the dicta of the Constitution Bench, this writ petition seeking relief of regularization is maintainable. Though the counsel for the petitioners sought to draw the attention to several dicta pre Umadevi (supra), but the same are of no avail in view of the Constitution Bench having been constituted and adjudicated the matter. The counsel for the petitioners then invited the attention to [Oil and Natural Gas Corpn. Ltd. Vs. Engineering Mazdoor Sangh](#), . However, the said judgment was pronounced shortly after the Constitution Bench judgment in Umadevi and does not consider the judgment in Umadevi and thus no reliance can be placed thereon.

23. The counsel then drew attention to [Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana](#), . The Supreme Court in the said judgment has held that Umadevi did not consider the powers of the industrial adjudicator under the Industrial Disputes Act. The petitioners who have opted not to approach the industrial adjudicator and are seeking relief directly from this Court cannot for this reason rely on the said judgment also which deals exclusively with the powers of the industrial adjudicator.

24. The counsel for the petitioners next drew attention to [Mineral Exploration Corporation Employees' Union Vs. Mineral Exploration Corporation Limited and Another](#), The said judgment though post Umadevi is not found to help the petitioners. The Supreme Court merely remanded the matter to the Industrial Tribunal for decision in accordance with Umadevi. Of course, while so remanding it was observed that the term "contingent employee" is unknown to industrial law and in that case was also not included in the Standing Orders and that it will be "proper

to regularize the services of the workmen who have worked for several years". I may however add that subsequently in [Official Liquidator Vs. Dayanand and Others](#), while noticing that certain judgments had attempted to dilute the ambit of Umadevi, the Supreme Court held that it is not permissible.

25. The counsel for the petitioners also contends that Umadevi does not create an absolute bar. The argument is that the Constitution Bench of the Supreme Court has held the courts to be not entitled to regularize temporary/casual/daily wage workers "ordinarily" or "normally". It is contended that wherever the court finds the circumstances to be extraordinary or an unfair labour practice having been followed, the bar of Umadevi would not come into play. It is contended that the respondent ONGC has nowhere disclosed as to what, if any, is the procedure for regular employment of the workmen in Class III and Class IV categories in which the petitioners were taken as contingent workers. Reference is made to Section 3(d) of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 to contend that the same does not apply to employment to do unskilled office work as defined in Section 2(i) of the said Act; thus it is not as if regular employment in the categories in which the petitioners have been taken as contingent employees has to be necessarily through employment exchange. It is further contended that the requirement even if any that the office order dated 16th July, 1991 imposes, of prohibiting fresh contingent employment from open market without being sponsored by the Employment Exchange cannot override the Standing Orders aforesaid of the respondent ONGC. Alternatively it is argued that the same prohibits fresh employment only, the petitioners are employed from much earlier. It is also contended that the petitioners are claiming their rights under the Standing Orders aforesaid of the respondent ONGC and for this reason also the judgment in Umadevi is not applicable. It is urged that though in terms of the Settlement in the industrial dispute (supra) and the order of the Simla High Court as well as the stand in the counter affidavit in the present writ petition, the petitioners were to be absorbed / regularized whenever vacancy occurs and the vacancy exists as per the report (supra) of the Committee, but the petitioners have not been regularized. The argument is that all the said facts clearly show the unfair labour practice adopted by the respondent ONGC and which element has not been considered by Umadevi. It is contended that the case of exploitation of the petitioners workmen by the respondent ONGC has been made out, and the same is sufficient to take the present case out of the "ordinarily" and "normally" of Umadevi. It is contended that the initial engagement of the petitioners being in accordance with the Standing Orders of the respondent ONGC and which also entitles the petitioners to be considered for regularization, cannot be said to be an illegal employment and thus no case of backdoor entry is made out. Reference is also made to Basavaraj R. Patil and Ors. v. The State of Karnataka, 2001 SCC 87. and Kehar Singh v. Electronics Corporation of India 43 (1991) DLT 13 (SN) (DB) to contend that for absorption/regularization of those already employed/working, the route of employment exchange is not

required to be followed. It is further urged that the conversion from contingent to regular employees does not come within the mischief of Umadevi.

26. The learned ASG appearing for the respondent ONGC has per contra contended that this second round of litigation on the same cause of action is not maintainable. It is assured that in terms of the Settlement arrived at and the order of the Simla High Court, as and when the vacancies are occurring, the petitioners are being considered for regularization and will continue to be so considered in future also; no case has been made out of the respondent ONGC having acted in contravention of the said settlement/order. It is urged that merely because some of the petitioners, in an attempt to be retained were transferred wherever possible cannot be held against the respondent ONGC. The difficulties in engaging the petitioners in other regions, the unions wherein prohibit bringing of workers from outside the region are explained. Otherwise it is contended that there is no change from the time of dismissal of the earlier writ petitions and the SLPs.

27. It is also contended that in [Oil and Natural Gas Corpn. Ltd. Vs. Engineering Mazdoor Sangh](#), the industrial adjudicator had only directed ONGC to consider the workman as and when the vacancies to the regular post arise; the Single Judge and the Division bench of the High Court had however directed regularization and which order was set aside by the Supreme Court. Attention is also invited to the paragraphs of the said judgment in which the Supreme Court noticed the nature of employment and the needs of ONGC and the dwindling exploration licences of the ONGC. Reliance is also placed on [Satya Prakash and Others Vs. State of Bihar and Others](#), in this regard. The petitioners in Satya Prakash (supra), who had also been employed as daily wagers for over ten years, sought to claim regularization by enforcement of paragraph 53 of Umadevi judgment. The Supreme Court however clarified the distinction between illegal and irregular employment. An irregular employment within the meaning of para 53 was defined as one in accordance with the selection procedure, against a vacant post but suffering from want of compliance of one of the elements in the process of selection which does not go to the root of the process.

28. The counsel for the petitioners in rejoinder has urged that the petitioners now after 25 years cannot be terminated and are ready to work anywhere in India for the respondent ONGC. It is contended that the petitioners are entitled to the second round of litigation because they are still working for the respondent ONGC. It is stated that Umadevi is a case of illegal appointment while the petitioners have been appointed in accordance with the standing orders of the respondent ONGC. Attention is invited to certain other judgments, though of the pre Umadevi period, but holding work for ten years itself to be a sufficient qualification for regularization.

29. The petitioners cannot now be heard to urge that their initial appointment was regular. The Standing Orders for contingent employees of ONGC, on which reliance is placed by the petitioners provide that the same do not apply to regular employees

to whom Fundamental and Supplementary Rules, Central Civil Services (Classification, Control and Appeal) Rules, 1965 etc have been extended. The very nomenclature of employment of the petitioners i.e. as contingent employees shows that the employment of the petitioners was subject to the contingency. The right of absorption / regularization of the petitioners in terms of the said Standing Orders also is only to be considered for conversion as a regular employee. The question of such conversion can arise only subject to the possibility of a post/vacancy. In the earlier writ petitions preferred by the petitioners it has been unequivocally held that there was then no post or vacancy in which the petitioners could be accommodated. Save for the report aforesaid of the Committee, now also it is not borne out that there is any post or vacancy in which the petitioners can be absorbed. On the contrary, it is mentioned in the counter affidavit of the respondent ONGC and also borne out from the cited judgments that the work of the respondent ONGC in the Northern Region has been dwindling and the respondent ONGC is actually over staffed and is resorting to voluntary retirement schemes to remedy the same. In such circumstances, when the respondent ONGC has no job or work for the petitioners, the petitioners cannot be imposed on the respondent ONGC.

30. The Constitution Bench judgment in Umadevi cannot be distinguished on factors as urged. It is quite clear from the prayer clause of the writ petition itself that the relief claimed in the writ petition flies in the teeth of the judgment in Umadevi. The expression "ordinarily" and "normally" in the judgment cannot be so stretched to set the judgment at naught. The consideration in this regard urged are such which would be found in most of the cases of regularization. In Satya Prakash (supra) also the workmen had been continuing for over ten years. If such considerations are permitted to circumvent the Constitution Bench judgment, it would perpetuate the malady which the Constitution Bench in Umadevi intended to remedy. As far as the entitlement of the petitioners under the Settlement already arrived at and/or the order of the Simla High Court is concerned, though the Learned ASG appearing for the respondent ONGC has assured that the respondent ONGC stands by the same, neither is it the pleaded case of the petitioners that the respondents have acted in contravention of the same nor have the petitioners been able to give a single instance of such a violation. The argument that the petitioners have a right because of the Standing Orders is also not an argument to permit the petitioners to re-litigate. The said standing orders were in existence even at the time of the earlier writ petitions.

31. This Court therefore does not find the petitioners to have made out any case for grant of the relief prayed for in the writ petition. The writ petition is dismissed. However, since the petitioners have now for the last about four years enjoyed the interim protection of this Court and the petitioners are likely to prefer their remedies against this order also, to prevent the situation from being precipitated further, it is directed that notwithstanding the dismissal of this writ petition, the interim order of status quo earlier granted therein shall continue for a further

period of eight weeks from today. No order as to costs.