* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 30th April, 2024**
Pronounced on: 29th July, 2024

\+ W.P.(C) 2133/2020, CM APPL. 7516/2020, CM APPL. 9217/2022, CM APPL. 28944/2022, CM APPL. 31638/2022,CM APPL.46392/2023 & CM APPL. 47271/2023

THE DIRECTOR, CGHS AND ORS. ..... Petitioners

Through: Mr. Chetan Sharma ASG, Mr. Vijay Joshi, Mr. R V Prabhat, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Saurabh Tripathi, Mr. Vikramaditya Singh Advocates for Union Of India

versus

SHRI RAM CHANDER AND ORS. .....Respondents

Through: Mr. Kamlesh Kumar Mishra, Mr. Nitin Kumar Nayak, Mr. Deepak Raj, Ms. Renu, Ms. Samishti Soloman, for Workmen from Nagpur.
Mr. Vinay Kumar Garg, Senior Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Mr. N. Bhushan, Ms. L.Gangmei and Ms. Surbhi Bagra, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioners seeking the following reliefs:-

" (i) pass an order thereby issuing a writ of certiorari quashing the impugned order dated.23.08.2019 passed by the Presiding Officer CGIT-cum- LABOUR COURT-1 Rouse Avenue Court New Delhi.
(ii) any other or further order in favour of the petitioners which this Hon'ble court may deem fit and proper in the facts and circumstances of the case."

FACTUAL MATRIX

2. The petitioner no. 1 is Central Government Health Scheme (hereinafter "CGHS") through its Director and the petitioner no. 2 is National Informatics Centre, Ministry of Electronic and IT (Meity) and the petitioner no. 3 is the National Informatics Centre and Services (Inc.), a company incorporated under section 25 of the Companies Act, 1956.

3. The respondent no. 1 to 3 are the main claimants before the learned Tribunal, and have made claim for and on behalf of 267 contract workers who have been outsourced by the outsourcing agencies of the petitioner no.1 through petitioner no. 3.

4. The respondents no. 4 and 5 are the outsourcing agencies, which have provided the manpower services on contract basis through the petitioner no. 3 to the petitioner no. 1.

5. In 2006, with an objective of providing convenient and transparent services to its beneficiaries and improving CGHS functioning, the petitioner no. 1 started computerizing its services. A High-Power Committee appointed by Cabinet Secretary, presided by Mr. P K Kaul, former Cabinet Secretary

(Kaul Committee) proposed a Pilot Project in Delhi in 2006 at Laxmi Nagar Wellness Centre for the computerization of the services.

6. The Project Plan and budget estimates for Computerization of petitioner no.1 on pilot basis was prepared by petitioner no. 2. Eventually, the Pilot Project at Laxmi Nagar was successfully implemented as per estimates prepared by the petitioner no. 2, on the rates approved by the petitioner no. 3 for the Hardware, Internet connectivity related equipment, Human Resources and other Consumables.

7. The petitioner no. 3 provided the manpower and other resources. Accordingly, the petitioner no.3 provided two Data Entry Operators and four programmers.

8. After the successful implementation of the pilot project at CGHS Laxmi Nagar, it was decided to computerize all the centers and AD Offices of petitioner no.1.

9. In pursuance of the same, the petitioner no. 1 requested the petitioner no. 3 to outsource the manpower for engaging in the computerization project in all over India basis. Accordingly, the petitioner no. 3 contracted different vendors from the year 2007 onwards and once the Computerization Project was complete, on 21st January, 2014, the petitioner no. 1 issued a discontinuation letter giving all the contract employees a formal notice that their services will be terminated w.e.f. 31st March, 2014.

10. The process for hiring the outsourcing agencies and floating the tender was going on so, the date of discontinuation of existing supplies of contracted manpower was extended upto 30th June, 2014 vide order dated

27th June 2014 and again further extended upto 31st July, 2014 vide order dated 30th June, 2014.

11. In the meantime, the contracted workers/respondents i.e., the workers who were outsourced by the agencies to the petitioners sought regularization by making a representation with the petitioner No.1 before the Ministry of Labour and Employment and accordingly, the Ministry of Labour, made a reference to the Labour Court vide reference No. L-42012-30-2014-IR(DU) dated 15th July, 2014 herein under:

> *"a) Whether the services of the workmen Shri Ram Chander and Others can be regularised in the establishment of CGHS as they have been working in the establishment since 5 to 7 years on continuous basis. If not,*
> *b) What relief the workmen are entitled?"*

12. The learned Tribunal passed the impugned order on 23rd August, 2019 in favour of the respondents holding that the respondents are the employees of the management of the petitioner no.1 and entitled to regularization from the year 2006 i.e., from the date of their appointment.

13. Aggrieved by the impugned award, the petitioners filed the instant petition.

SUBMISSIONS

(***on behalf of the petitioners***)

14. Learned ASG appearing on behalf of the petitioners submitted that the impugned award passed by learned Tribunal is not in accordance with the settled principles of law as termination of the contract would automatically lead to termination of the services. Hence the demand of regularization by

the respondent no. 1 to 3/workmen is not in accordance with the settled position of law.

15. It is submitted that the respondents no. 1 to 3 and other contracted workers herein were hired by the outsourcing agencies i.e. respondent no.4 and 5 herein and petitioners did not pay salary to the workmen. Hence, the respondents no.1 to 3 as well as other members of their groups were never the "workman" of the petitioners and therefore, the petitioners are not responsible to regularize the services of the respondents/employees.

16. It is further submitted that the respondents no. 1 to 3 and their group of contracted workers were given appointment letter by the outsourcing agencies i.e. respondents no. 4 to 5 and they were paid salaries by the outsourcing agencies, therefore, the petitioners did not have a role to play in control of their services in any manner.

17. It is submitted that since the contracted manpower was to be paid the wages through their outsourcing agency, therefore, their daily attendance in a Monthly Performance Report Performa were given by the petitioner No. 1 and accordingly the bills were to be raised by the respondents no. 4 & 5.

18. It is submitted that the impugned award has been passed without appreciating the facts as well as evidence placed on record by the petitioners.

19. It is further submitted that the learned Tribunal failed to take into consideration that there cannot be appointment of contract workers in place of regular vacancies when the same does not exist and since there are no vacancies after computerization project is implemented, the respondents cannot seek regularization.

20. It is submitted that as per Standing Finance Committee proposal, no regular posts were sought to be created for the said Project and it was clearly stated in the approved SFC Note that after 1 year, petitioner no.1's staff was to take over all operation without any assistance from the Data Entry Operators (DEOs)/other contractual workers. Hence, as per approved Project Proposal Data Entry Operators and Operational Managers were approved for a specific period of time only.

21. It is submitted that the learned Tribunal erred in not appreciating the law led down by the Hon'ble Supreme court as well as by various High Courts in a catena of judgments, that if the contract is for supply of workers, the worker supplied by the contractor shall work under the direction, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer.

22. It is contended that the petitioners have specifically submitted in their evidences that they were merely hiring the workers from outsourcing agencies hence there is no question of regularization of the respondent no. 1 to 3 and other contracted workers.

23. It is submitted that the respondent nos. 1 to 3 were appointed to hand-hold the workers of petitioner no.1 and were never appointed at the post of a permanent worker. Hence, it cannot be said that they are "*badli*" workers.

24. It is further submitted that equal work for equal pay is not applicable as contractual employees are Data Entry Operator and not Lower Division Clerk and there is proof on record to substantiate that proves that these two groups are similarly situated.

25. It is submitted that the learned Tribunal erred in holding that the judgment of ***State of Karnataka v. Umadevi*** [1] wherein the Hon'ble Supreme Court held that regularization is not a vested right, is not applicable to industrial workers therefore, the respondent workers are entitled to be regularized as employees of petitioner no.1.

26. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs be granted as prayed for.

(on behalf of the respondents)

27. *Per Contra*, the learned senior counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the instant petition has not raised any substantial question of law, which warrant interferences of the writ Court.

28. It is submitted that the petitioner never obtained the requisite license for employing contract labour as mandated under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970.

29. It is submitted that the learned Tribunal rightly considered the various documentary evidence placed on record by the respondent nos. 1 to 3 such as relieving/joining letters, transfer letters, retention orders, maintenance of attendance registers, issuance of performance certificates, identity cards, discontinuation/termination orders, as well as work experience and character certificates, all issued by the officials of the petitioners.

30. It is further submitted that the petitioner maintains a common attendance records for both regular employees and for the respondent nos. 1

[1] 2006 (4) SCC 1

to 3. Moreover, various documents such as memos, ID cards, transfer orders, work-experience letters, user ID-passwords, and participation certificates in petitioner no.1's Programs/Seminars were issued by the petitioner no.1 to the respondent nos. 1 to 3.

31. It is submitted that the petitioners' witness admitted that the Disciplinary Authority vested with the petitioners and they periodically issued memos to the workers and the work performance of the respondent nos. 1 to 3 as well as their leave applications was overseen by the official of the petitioner.

32. It is contended that the petitioners failed to produce any document on record to corroborate the fact that respondent nos. 1 to 3, were directly appointed by respondent nos. 4 and 5. Thus, the contract arrangement is sham and bogus, and respondent nos. 1 to 3 are the employees of the petitioner No. 1.

33. It is submitted that the petitioner witness (MW-1), admitted that the work performed by the respondent nos. 1 to 3 is of permanent and perennial in nature. Moreover, as per Ex. MW1/W5 i.e., the reply of RTI given by the petitioner no.1 enunciates the duties of Operational Management. It is contended that the said duties performed by the respondent nos. 1 to 3 are quintessential to the functioning of the petitioner no.1.

34. The learned counsel for the respondent placed reliance upon the Ex. MW1/W7, as per which the petitioners itself highlighted the importance of the work of respondent nos. 1 to 3, as well as admitted the fact that their

absence will disrupt the entire system and will disrupt the petitioner no/1's workforce.

35. It is contended that the petitioners did make any averments regarding the non-fulfillment requisite qualifications before the learned Tribunal as well as before this Court. Furthermore, both MW-1 & MW-2 in their testimony have admitted the fact regarding fulfillment of requisite qualifications by the respondents no. 1 to 3.

36. It is submitted that the Hon'ble Supreme Court in the judgment of ***Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana***[2], has categorically held that the judgment of ***Uma Devi (Supra***) cannot be held to have overridden the powers of Industrial Tribunals/Labour Courts in passing appropriate relief vis-a-vis granting permanency once unfair labour practice on the part of employer is established

37. In view of the foregoing submissions, the respondents prayed that the instant petition may be dismissed.

ANALYSIS AND FINDINGS

38. Heard the learned counsel appearing on behalf of the parties and perused the record.

39. It is the case of the petitioners that the impugned award passed by the Tribunal is not aligned with settled legal principles. Specifically, it was argued that a contract worker cannot claim regularization as a right once their contract term has expired, resulting in termination. The petitioners

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[2] (2009) 8 SCC 556

asserted that the demand for regularization by the respondents (workmen) is not in accordance with established legal positions. Furthermore, it was emphasized that respondents 1 to 3 and other contract workers were hired by outsourcing agencies (respondents 4 and 5), not directly by the petitioners, who did not pay their salaries. Therefore, the petitioners contended that these workers were never the "workmen" of the petitioners, absolving the petitioners of any responsibility to regularize their services. Additionally, the petitioners highlighted that respondents 1 to 3 and their group received appointment letters and salaries from the outsourcing agencies.

40. The petitioners only provided daily attendance reports to the outsourcing agencies, who then raised bills accordingly. The petitioners argued that the impugned award failed to appreciate the evidence and facts on record. They further contended that the Tribunal overlooked established legal principles, including the Supreme Court's ruling that contract workers cannot be appointed in place of regular vacancies unless such vacancies exist. The petitioners noted that no regular posts were created for the computerization project, and after one year, regular staff would take over operations without contractual workers. The petitioners emphasized that the Tribunal erred in not applying the law that workers supplied by a contractor, even if working under the principal employer's direction, do not become direct employees of the principal employer. Thus, the petitioners concluded that there is no basis for the regularization of respondents 1 to 3 and other contracted workers.

41. The respondents vehemently opposed the petition, contending that the instant petition does not raise any substantial question of law warranting interference by the writ court. It was contended that the petitioners never obtained the requisite license for employing contract labour as mandated under Section 7 of the CLRA Act. The respondents maintained that the Tribunal rightly considered various documentary evidence, such as relieving and joining letters, transfer letters, retention orders, attendance registers, performance certificates, identity cards, termination orders, and work experience certificates, all issued by the petitioners' officials.

42. The respondents further submitted that the petitioners maintained common attendance records for both regular employees and the respondents. Documents such as memos, ID cards, transfer orders, work-experience letters, user ID-passwords, and participation certificates in the petitioner's programs were issued to the respondents. It was highlighted that the petitioners' witness admitted that the disciplinary authority over the respondents was vested with the petitioners, and the petitioners oversaw their work performance and leave applications. The respondents contended that the petitioners failed to produce any documents proving that the respondents were directly appointed by the outsourcing agencies, thus suggesting that the contract arrangement was sham and bogus. It was also noted that the petitioners' witness admitted that the work performed by the respondents was of a permanent and perennial nature, crucial to the petitioner's functioning, and that their absence would disrupt the entire system.

43. The respondents argued that the petitioners did not raise issues regarding the respondents' qualifications before the Tribunal or this Court, and both MW-1 and MW-2 testified to the respondents meeting the requisite qualifications. Citing the Supreme Court judgment in ***Maharashtra SRTC (Supra)***, the respondents argued that the ***Uma Devi (Supra)*** judgment does not override the powers of Industrial Tribunals/Labor Courts to grant permanency when unfair labour practices are established. Thus, the respondents prayed for the dismissal of the petition.

44. Before delving into the averments advanced by the learned counsel appearing on behalf of the parties, this Court deems it apposite to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances. Firstly, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. Secondly, in matters wherein the Labour Court has adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. Thirdly, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. Fourthly, a High Court shall intervene with the order/award passed by a lower court only in

cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Court is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the court to intervene with the order passed by the concerned court. Fifthly, if the Court observes that there has been a gross violation of the principles of natural justice. Lastly, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

45. Therefore, the limited question in the instant petition is whether impugned order dated 23rd August, 2019 passed by the learned Labour Court merits intervention of this Court.

46. For adjudication of the instant petition, this Court will now advert to perusing the impugned award. The relevant extract of the impugned award has been reproduced herein below:

> *"<u>Issue No.1 and 2:-</u>*
>
> *10. Both these Issues being co-related are taken up together as they can be conveniently disposed of by common discussion.*
>
> *11. Case of the claimants is that in the year 2006 they had joined the services after undergoing the interview and technical test conducted by the officers of the CGHS and assisted by the Officers of NIC and NICSI and thereafter the workmen were selected & posted/transferred to different locations for which the transfer order were issued and acceded by the office of the CGHS. It is not in dispute that they are still working under the Management/s. A/R for the claimants submitted that the contract if any between CGHS and NICSI etc. is sharm & bogus. The claimants are the direct employees of the CGHS but the Management/s by adopting unfair labour practice, are*

depriving the claimants their legitimate right of regularization and lawful dues in the regular pay scale.

12. Per contra, leamed A/R appearing for the Management of CGHS strenuously argued that the claimants were not directly appointed by the Management herein and that control, transfer and management of claimants was in fact done by Management of NICSI. As such, there does not exist any relationship of employee & employer between the claimants and the Management No.1. It was argued that for completion of "Computerization project of its dispensaries and offices in 2006" techno-mangerial manpower was outsourced to NICSI and control, transfer and management of claimants/workmen herein was of Management of NICSI and not of CGHS. MOU was signed amongst CGHS NICSI and NIC, terms of which provided that NIC was responsible for software development, training & operation support with the manpower to be provided by NICSI outsourced through NICSI. The computerization project was completed in three years but outsourced manpower through NICSI was required for another three years after 2009 for stabilization of the project. On the other hand, it was argued on behalf of NICSI that Management of NICSI had neither appointed the workmen rather the workmen Sire the employees/workers of empanelled vendors viz. M/s E-Centric Solutions Pvt. Ltd. and M/s IAP Company Pvt. Ltd. which had supplied Data Entry Operators to CGHS and that CGHS availed the services of the workmen as Data Entry Operators to work in its dispensaries & office. He concluded that the Management of NICSI worked only as a facilitator between manpower provider/s viz. empanelled vendors and neady organization/CGHS. During the course of arguments, learned counsel appearing for the Management of NICSI heavily relied

on the decisions of our own High Court in the case of ***Anil Lamba & others Vs. Gov.t of NCT & others, 2017 III AD (Delhi) 572 and Anjani Kumar Singh Versus Ministry of Drinking Water & Sanitation and another*** *to buttress his submissions that contractual appointments do not confer any right on the appointees and they can not be treated to be the employees of principal employer.*

13. There is no dispute about proposition of law that that if the contract is for supply of labour, necessarily the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor. Reference in this regard may also be made to a number of judgements viz. ***Workman Vs. Coates of India Ltd. (2004) 3 SCC 547; Haldia Refinery Canteen Employees Union Vs. Indian Oil Corporation Ltd: (2005) SCC 51; Balwant Ral Saluja Vs. Air India Ltd (2014) 9 SCC 407; Ram Singh Vs. Union Territory, Chandigarh (2004) 1 SCC 126; Workman of Nilgiri Coop Marketing Society Vs. State of Tamilnadu (2004) 3 SCC 4514 Union of India and another Vs. Aryulmozhi Iniarasu and others (2011) 9 SCR 1****. It is also well settled that the control test and organization test are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court/Tribunal is required to consider several factors vis-a-vis-who is the appointing authority, who is a paymaster, who can dismiss; how long alternative service lasts, the extent & control of supervision; the nature of the job professional or skilled work etc. etc, which would have a bearing on the result. It would be worthwhile to first consider the evidence adduced on record by the parties to the dispute, especially because Management No.1*

CGHS has taken a plea that for completion of its "Computerization Project and the manpower was outsourced through NICSI, whereas Management of NICSI has taken a plea that it served only a facilitator between the needy organization CGHS and the empanelled vendors -manpower suppliers and had no role to enforce the service conditions or to pay remuneration/compensation to the workmen.

14. Testimony of the workmen/claimants who appeared in the witness box as WW1 to WW189 is in line with the averments made in the claim petition. Particulars of 267 Nos. of workmen/claimants in respect of whom the reference has been sent are given in Annexure and same is now exhibited as Ex.C-1. The claimants have testified in their testimony that no advertisement was issued in any newspaper excepting a notice was displayed on the notice board of Management (of CGHS). Though no letter of Interview was issued by CGHS, however there were lot of candidates who appeared for the interview and there were large number of vacant posts of DEOs with the Management. While denying the suggestion that they were deployed under the MOU between CGHS, NICSI and NIC, the claimants/workmen have deposed that after their selection by CGHS a list of selected candidates was displayed on the notice board of the management (of CGHS) with the direction to them for posting at various places. They also testified that their training was conducted by NIC but they were sent for training by CGHS. The claimants have filed on record number of documents viz. Ex. WW1/15 to Ex.WW1/19 are the relieving & joining letters of Shri Abdul Razaq - ong of the claimants, addressed to Chief Medical Officer and duly forwarded by concerned Medical Officer of CGHS. Vide office. order Ex. WW1/23 issued by Office of Addl. Director (North Zone)

CGHS, 36 Nos. of workmen working as Data Entry Operators were transferred from one CGHS Dispensary to another CGHS Dispensary; Same is true about the documents Ex.WW1/28 to Ex.WW1/30; Ex.WW84/1 Ex.WW88/1 to Ex WW88/10;Ex.WW90/6 Ex.WW121/1; Ex.WW122/1; Ex.WW126/1; Ex.W/151/1 whereby Transfer/posting of certain workers working as Data Entry Operators was made by the Office of Addl.Director, CGHS (South Zone). The claimants have also led on record number of other documents showing that transfer/posting of the workmen working as Data Entry Operators used to be done by the Management of CGHS. Ex.WW1/31 to Ex.WW1/39; Ex.WWW168/1; Ex.WW168/2 are the orders of relieving and joining letters of the workmen Abhishek Kumar Kushwaha, Deepa Kannaujiya, Prmod Singh Rawat, Saurabh Khushwaha, Kamaljeet Kumar, duly issued & forwarded by concerned CMO of CGHS Wellness Centre. Same is true in respect of Ex.WW83/2; Ex.WW83/3; Ex.WW158/1 2; Ex.WW159/2; Ex.WW167/2 issued in respect of other workers by the Medical Officers of CGHS. Document Ex.WW1/40 is the copy of letter dated 14/5/2010 which Dr.G.N. Pounikar, Addl., Director of CGHS Nagpur had addressed to DIO, NIC, Nagpur for retention of 17 Nos. of DEOs for CGHS Nagpur from 1/4/2010 onwards. Documents Ex.WW1/41 to Ex.WW1/49 are the extracts/copies of Attendance Register maintained at Timarpur Dispensary of CGHS and performance certificate issued by CMO of CGHS Dispensary at Laxmi Nagar, Delhi. Ex.WW1/51 and Ex.WW1/52 are the performance-cum-experience certificates issued to DEO Abdul Razaq and Kamal Jeet Kumar respectively by Dr.Jagdish Ghosh of CGHS Wellness Centre, Kingsway Camp, Delhi and Dr. Nikhilesh Chandra, SAG of CGHS, Allahabad. Same is true about

documents Ex.WW97/1Ex.WW99/2, Ex.WWW/100/1, EXWW107/1; Ex.WW108/4; Ex.WW129/1 Ex.WW130/1; Ex.WW132/1 & 2; Ex.WW138/1; Ex.WW142/1; Ex.WW152/1; Ex.WW155/1 & 2; Ex.WW163/1; Ex.WW168/3 Ex.WW177/2; issued in favour of other workmen /claimants by the concerned Medical Officers of CGHS. Identity cards Ex.WW1/62 and Ex,WW1/63 were also issued to the workmen concerned duly signed by the officers of CGHS alongwith official seal Office order Ex.WW1/2 was also issued by the Management of CGHS, stating that there would be no further recruitment of Data Entry Operators from 31/3/2014. Document Ex.WW1/5 is the copy of letter dated 29/4/2014 addressed by Addl. Director, CGHS, Jaipur to the Deputy Director (Admn.), Directorate of CGHS, New Delhi regarding approval for engagement of Group-C on outsource basis against vacant posts of LDC and services of DEOs to be discontinued. There are number of other documents filed on record from the side of claimants/workmen about the work-experience/character certificate issued to them by the Medical Officers of CGHS. All these documents prima facie show that the claimants have been working in the dispensaries/offices of CGHS and control & supervision over their work was that of Management of CGHS

15. According to the testimony /affidavit Ex.MW 1/A of Shri V.K. Dhiman, for completion of the pilot project "Computerization of CGHS dispensaries & its offices in Delhi and outside techno managerial manpower was outsourced to NICSI and that in fact there is no sanctioned post of Data Entry Operators with the Management of CGHS. He has filed on record copy of Project plan and its budget estimate for hiring the manpower as Ex.MW1/1; copy of communication from NIC and OM as Ex.MW1/2; copy of approval of Standing Finance

Committee as MW1/3; copy of noting of Integrated Finance Division of the Ministry regarding continuation of DEOs as Ex.MW1/4; copy of Office Order dated 27/6/2014 (Ex.MW1/5) regarding discontinuation of services of DEOs after 30/6/2014; copy of order (Ex.MW1/6) regarding retention of DE'Os for one more month till 31/7/2014; Report of High Level Committee of Hon'ble High Court as Ex.MW1/7; copy of the tripartite MOU and its addendum executed amongst CGHS, NICSI and NIC as Ex.MW1/8; copy of NICSI tender document as Ex.MW1/8; proforma invoice by NICSI as Ex. MW1/10 and copy of the work order issued by NICSI to the vendor/s as Ex.MW1/11; copy of the appointment/extension letter issued to the workman as Ex.MW1/2 and copy of payment details made to empanelled vendors of NICSI as Ex.MW1/3. On the strength of these documents, learned A/R appearing for the Management of CGHS strenuously argued that the claimants/workmen were never appointed/recruited by the Management of CGHS, rather they were the engaged by the empanelled vendors of NICSI. In nut-shell, the stand of the Management of CGHS is that the workmen are the contractual workers.

16. MW1 has admitted in his cross examination that the Management never obtained any licence under Section 7 of CLRA Act. This witness failed to point Dut any document filed on record to show that the claimants were directly appointed by the Contractor/empanelled vendor. ***He admitted that 10 claimants were terminated by the Management in Kanpur (UP) but were reinstated after 15 days of their termination vide Ex.WW40/1. He also admitted that from time to time memos were issued to the claimants by the Management. He further admitted that Chief Medical Officer/s supervised the work and performance of the claimants. The claimants moved***

applications for leave to the concerned CMO who granted/declined the same. He also admitted that CMO is the disciplinary authority in regard to claimants. Concerned workmen were/are working continuously and uninterruptedly till date excepting those worker who voluntarily left. He also admitted that by & large the work & conduct of the workmen is satisfactory except in a fow cases. He admitted that the claimants heroin are fulfilling the essential qualifications. He admitted that the work of Data Entry Operators is regular In nature. Though he failed to reply as to how many contractors were changed from 2006 till 2014, he explained that since 2014 till date about three contractors were changed but the workmen remained the same. *He admitted that Ex.MW1/W-7 was issued by the Management about the importance of Data Entry Operators and Operation Managers. He also admitted that ID cards, transfer orders, work experience letters, User ID and password, participation certificates in CGHS programme and seminars were issued to the claimants by the Officers of CGHS, He showed his ignorance if 445 posts of LDCs were lying vacant during the period from 2006 to 28/4/2015. He admitted that as per document Ex.MW1/11, posts of Data Entry Operator and Technical Manager are termed to be "technical manpower". He conceded that MOU Ex.MW1/8 (signed/executed in 2008) expired in 2010. He had no material or document to show that any MOU was signed from 2010 to 2014. He also admitted that MOU Ex.MW1/8 does not mention that NICSI will provide Data Entry Operators and Operation Managers to CGHS.*

17. MW2-Uma Kant Jena has filed on record copy of the work order dated 1/1/2014 Issued in favour of M/s E Centric Solutions Pvt. Ltd. and M/s AIP Company Pvt. Ltd. as

Ex.MW2/2 and Ex.MW2/3 alongwith copy of the invoice dated 20/1/2014 and 15/1/2014 (Ex.MW2/4 and Ex.MW2/5) respectively issued to the aforesaid companies/empenalled vendors. He also filed on record copies of addendum to the MOU signed amongst the Co-Managements herein as Ex.MW2/8 to Ex.MW2/11, perusal of which shows that validity of MOU amongst them was extended in the year 2014 from time to time, till 31/12/2014. This witness while deposing that in the year 2006 there was no MOU amongst the co- management/s, has ***admitted that the claimants were engaged in the year 2006 and 2007. He clarified that during the period from 2006 till date about 12 vendors/contractors have been changed from time to time but the Management, never tried to ascertain the fact that vendors were changing from time to time, but the workers remained the same. According to him, there is nothing on record to show as to when the workmen/claimants were engaged by the vendor concerned or as to when their services were terminated by any of the vendors. He admitted that officials of Management of CGHS were exercising supervisory control over the claimants and same is his reply in regard to ID card, appreciation letters, Joining & relieving, work-experience letter, User ID and password etc. (issued to the claimants). He also admitted that CGHS was appointing, terminating, transferring, issuing appreciation letters etc. to the claimants. He further admitted that the claimants were working under the supervision and control of CGHS.*** *He clarified that their Management (NICSI) neither appointed nor terminated nor initiated disciplinary proceedings, nor issued ID cards/experience letters/User ID & password/s to the claimants.*

18. As per deposition of WW1 to WW187 coupled with the documents as referred to in foregoing paras as also the

testimony of MW1 & MW2 as discussed in para 16 & 17 above, ***it stands proved on record that the claimants have been working since 2006 under the direct control and supervision of the Management of CGHS and there has been no control or supervision over their work by NICSI or so called contractors/empanelled vendors of NICSI. 1 MOU Ex.MW1/8 (tripartite agreement amongst co-Managements was executed only on 3rd/4th December, 2008, whereas the claimants have been working in the*** *dispensaries/****offices of CGHS from 2006 onwards. Even if it is assumed for the sake of arguments that the Management of CGHS used to get work done from the claimants/workmen through empanelled vendors of NICSI****, pursuant to tripartite MOU Ex.MW1/8, in that eventuality also the question arises for consideration is whether the said contract is a sham or camouflage as alleged by the claimants.*

19. It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the, appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract 1 labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of the provisions of Act punishable there- under. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

20. Constitution Bench of Hon'ble Supreme Court in the celebrated case of ***Steel Authority of India Ltd. Vs. National***

Union Waterfront Workers, (2001) 7 SCC 1 *noticed the following circumstances under which contract labour would be held to be the workmen of the principal employer:-*

> *"107. An analysis of the cases, discussed above, shows that they fall in three classes:*
>
> *(i) Where contract labour is engaged in or in connection with the work of an establishment establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract or because the appropriate Govt. issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.*
>
> *(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.*
> *(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer."*

21. In the case of Management of ***Ashok Hotel Vs. the Workmen (W.P. - Civil No.14828/2006-decided on 19/2/2013)****, similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in*

the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

22. Except for the bald statement that the claimants are/were the workers of the contactors/empanelled vendors of NICSI, the Management of CGHS or NICSI has not filed on record any document to rebut the contention of the claimants that they were engaged by the Management and that is why the claimants who were engaged during the years 2006 are still working as such. It is matter of record that an application under Section 11-3(B) of the Act read with Rule 15 of the ID (Central) Rules, 1957 was moved on behalf of the claimants, praying that Management be directed to produce following documents viz.:-

> *(i) Details of the engagement of the vendors for the work of t he workmen alongwith the agreements, work orders and tenure of the said vendors*
>
> *(ii) Provide the time period when there was no vendor since the initial appointment of the workmen.*
>
> *(iii) Labour licence issued by the Labour Department in favour of the Management.*
>
> *(iv) Details of amount sanctioned by CGHS for the salary of the DEOs and Operation Managers alongwith file notings, etc. etc....*

Although on 8/7/2019 learned A/R appearing for the Management of CGHS in all faimess had stated that the Management would place on

record as far as Possible all the documents sought for by the workmen for proper appreciation of the controversy, however the Management of CGHS failed to produce the same for the reasons best known to it. It is notable that although the Management of NICSI has filed on record copies of the work order dated 1/1/2014 and copy of the invoice dated 20/1/2014 (Ex.MW2/2 and Ex.MW2/4) Issued in favour of M/s E Centric Solutions Pvt. Ltd. as well as copy of work order dated 1/1/2014 (Ex.MW2/3) & copy of invoice dated 15/1/2014 (Ex.MW2/5) issued in favour of M/s AIP Company Pvt. Ltd., however, the Management of CGHS or NICSI has not filed on record copy of any of the agreements/ contracts awarded to contractor/s/ empanelled vendors from 2006 onwards, so as to ascertain as to whether such contract was either for completion of any project or solely for supply of manpower.. Similarly, the Management No.3 NICSI has also not filed on record copies of the work order or invoice which were allegedly issued in favour of empanelled vendors during the period from 2008 to to 2013. It is also worthwhile to mention here that MW1 has conceded that Management of CGHS never obtained any licence under Section 7 of CLRA Act. MOU Ex.MW1/8-tripartite agreement amongst the Managements herein was executed on 3rd/4th December, 2008, whereas the workers/claimants have been working since 2006 in the dispensaries/offices of CGHS at Delhi and outside, Had the claimants/workmen been the employees of the so-called contractors/empanelled vendors of NICSI, overall control & supervision qua their work, duties and transfer/posting would have been done at the end of those contractors/empanelled vendors and not that of CGHS. It has also come on record that during the period from 2006 till date, about 12 vendors/contractors have been changed from time to time ***but the workers remained the same****. All these circumstances lead me to draw an inference against the Managements that the contract/agreement issued by the Management of CGHS or in turn by NICSI with the so called contractor/ empanelled vendors for availing the services of the claimants herein in the dispensaries/office of CGHS, was sham and camouflage. It is fairly settled that once the contract/agreement between the Managements and the so-called*

contractor is found to be a sham and camoufiage, in that eventuality the contract labour working in the establishment of the principal employer, are held to be the employees of the principal employer himself. To my mind, the authorities cited by the Management of NICSI are distinguishable and not applicable to the facts of this case.

23. Having regard to the overall facts and circumstances of the case as discussed hereinabove, this Tribunal has no hesitation to hold that the instant claim is maintainable and that the claimants are the employees of the Management of CGHS (principal employer) and there existed relationship of employer-employees between the Management of CGHS and the claimants/workmen herein.

24. Now, an important question/issue arises for consideration is as to whether the workmen/claimants who are working with the Management are entitled to be regularized to the post's to which they are working. It is fairly settled that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

25. Hon'ble Supreme Court in the case of ***Hari Nandan Prasad and another Vs. Food Corporation of India 2014) 7 Supreme Court cases 190*** *held as under :-*

> *"... We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of*

direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post-in question as per the Recruitment Rules. ***However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."***

26. Our own High Court in the case of ***Project Director, Department of Rural Development Versus Its Workmen through D.P.V.V.I.E.Union (W.P.-Civil No. 17555/2005 decided on 29/3/2019)*** *after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of Secretary, State of Karnataka and other Vs Uma Devi, 2006 (4) SCC 1 and of Delhi High Court in the case of Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018, has observed in para 27 and 29 as under.:-*

"27. "In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no relteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to

protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and can neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of the present case. ***Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."***

29. Thus*, in the light of the observations of the Supreme Court in Ajaypal Singh (supra), ONGC (supra) and Umrala Gram Panchayat (supra) as also of this Court in Ram Singh (supra), I find that the petitioner's reliance on the decision of the Supreme Court in Uma Devi (supra) and of this Court in Anil Lamba (supra) is wholly misconceived.* ***In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order, directing the petitioner to regularize the respondents' services........."***

From the above rulings, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service, unless there is a Scheme/policy of the Management & unless ***similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has***

been declined 2 the other. However, the Industrial Tribunal is vested with powers to curb unfair labour practices being adopted by the employer/s.

27. It is evident that most of the claimants/workmen have been working with the Management continuously and uninterruptedly since 2006, as Data Entry Operator/s and/or Operation Manager, nature of which is considered to be perennial. It is also evident from the testimony of MW1 and MW2 that in February, 2018 Management of CGHS used to sanction Rs.25508/- per Data Entry Operator inclusive of GST of 18% and vendor was charging about 10 to 15% out of the same and then remaining amount was paid to the workmen. This clearly goes to show that the Management of CGHS has deprived the workmen the status & privilege of permanent/regular employee, as the workmen working as Data Entry Operator a technical post are getting lesser than the wages/salary of a clerk/Lower Division Clerk in any govt. organization. Employing workmen as "badlis", casuals or temporaries and to continue them as I such for years together with the object of depriving them of the status & privileges of permanent ***workman amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act.*** *It emerges that the Management has adopted unfair labour practice in depriving the workmen/claimants herein of the status & benefit of permanent workman and such a practice is required to be curbed.*

28. It has come on record that the workmen/claimants herein have been working as Data Entry Operators/Operation Manager continuously and uninterruptedly since 2006-07 though described them as contractual employees but are not

being paid wages as per pay-scale for their respective categories rather they are paid wages less than that being paid to their regular counter- parts. Once the workmen/claimants are doing same duties and responsibilities 1 as are being performed by regular employees of the. Management, ***they are entitled to get wages at par with those of regular employees, on the principle of "Equal Pay for Equal Work".***

29. Hon'ble the Apex Court in the case of ***State of Punjab and others Vs. Jagjit Singh and others,*** *2017Lab****.L.C. 427*** *while upholding the principle of equal pay for equal work even for temporary employees observed as under :-*

> *"****The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like).*** *It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who. performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."*

30. In view of the rulings and facts of the case as discussed hereinabove, it is held that the claimants shall be deemed to be employees of the Management of CGHS and they shall be

entitled to get wages according to pay-scale of their respective categories/designation i.e.Date Entry Operators/LDCs, and Operation Manager concerned, with all consequential benefits. from the date of their initial engagement/appointment,.

31. As regards regularization of services of the workmen/claimant, it is. worthwhile to mention here that MW2 Uma Kant Jena has conceded in his testimony that the claimants/workmen fulfill the essential qualifications for being engaged as Data Entry Operator/Operation Manager. He also admitted that a large number of post of LDCs are lying vacant in CGHS but he could not tell the exact number. Thus it is evident that the claimants/workmen are entitled for the post/s of DEA/LDCs and/or Operation Manager, on which the workmen concerned are rendering services in CGHS dispensaries/offices. Since the workmen/claimants are working under the Management since 2006, this Tribunal considers it expedient in the interest of justice to direct the Management of CGHS to issue orders regarding regularization of the claimants/workmen from he date of their initial engagement, within a period of three months from the date publication of the Award

Award is passed accordingly in favour of the claimants and against the Management. Let copy of this Award be sent for publication as required under Section 17 of the Act."

47. The learned Tribunal observed that there is no dispute about proposition of law that if the contract is for supply of labour, the labour supplied by the contractor will work under the direction, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salaries are paid by the

contractor. It further reiterated that is a settled law that the control test and organization test are not the only factors to be considered and various other factors would be at play such as who is the appointing authority who is a paymaster, who can dismiss; how long alternative service lasts, the extent & control of supervision; the nature of the job professional or skilled work, etc.

48. The first factor considered by the learned Tribunal was the extent of control & supervision over the actions of the workman by the petitioners. The learned Tribunal placed reliance on the testimonial evidences of various workmen.

49. The workman i.e., WW1 to WW189 testified that for the purpose of posting job, petitioners' management has not issued any advertisement in the newspaper except a notice was displayed on the notice board of the petitioner no.1's notice board. Though no letter of interviews was issued by petitioner no.1, but various workmen had appeared for the interviews to fill the Posts of Data entry operators (DEO) in the petitioner entity.

50. It was further deposed that after the completion of this whole process, a list of selected candidates was displayed on the Notice Board of the petitioner no.1. All the workmen testified that though their training was conducted by NIC, but they were sent to the training by petitioner no.1.

51. The learned Tribunal also relied on the various documents being the reliving and joining certificates of various workers (exhibited as Ex. WW1/15 to Ex.WW1/19) which were issued by the Officer of petitioner no.1 at Office of Addl. Director (North Zone) CGHS as well as the transfer/posting Documents of various workers for the post of DEO issued in

favour of other workmen/claimants by the concerned Medical Officers of petitioner no.1 as well as the existence of the ID cards of the workmen was also noted which were issued by the officers of petitioner no.1 along with the official seal. Furthermore, the work experience/character certificates were also issued to the workmen by the Medical Officers of petitioner no.1.

52. Hence, on the factor of control and supervision, while relying upon the above documentary and testimonial evidence, the learned Tribunal decided that the workmen were working under the control and supervision of the Management of petitioner no.1.

53. Contention of the petitioner's witness – MW-1 is that the workers were merely contractual workers, relying on the documents testified that there was no such post of DEO in the finality of project and the MOU also does not find any mention of the posts of DEO, Hence, it was contended that the workmen were engaged by the empaneled vendors of NICSI. Dealing with the aforesaid contention, the learned Tribunal observed that the petitioner no.1 never obtained any license under Section 7 of Contractual Labour (Regulation and Abolition) Act, 1970, as per which, the principal employer shall get a license under the Act for employing contractual employees.

54. It further observed that the witness also failed to point out any document which showed that the workmen were appointed by the Contractor or the empaneled vendors.

55. As per the petitioner no.1's witness testimony, it was testified that petitioner no.1 issued memos time to time and all the leave application were

dealt by the Chief Medical Officer of petitioner no.1. It was further admitted by him that the Chief Medical Officer of petitioner no.1 also supervised work of the workmen. He also deposed that all the workmen at the post of Data Entry Operators were taken in after verifying proper qualification and the work post of Data Entry Operators is regular in nature. Further in his testimony, he deposed that approximately 3 contractors have been changed from 2006 however, the workforce remained same. It was further deposed that though the MOU nowhere mentioned the word Data Entry Operators but as per the testimony it was found that DOEs were covered under the term "technical manpower" mentioned in the MOU.

56. The petitioner's witness i.e., MW-2 testified that 12 contractors have been changed from time to time, however, the workers remained same as well as admitted workers were working under the supervision of the petitioners. He further deposed that NICSI neither appointed nor initiated disciplinary proceedings, and also did not issue ID cards/experience letters/User ID & password/s to the workers.

57. The learned Tribunal held that as per deposition of WW1 to WW187 coupled with the documents referred in foregoing paras as well as the testimony of MW-1 & MW-2, held that the workers have been working since 2006, under the direct control and supervision of the Management of the petitioner no.1.

58. The learned Tribunal observed that as a settled law under the Contract Labour (Regulation & Abolition) Act, 1970 and Industrial Disputes Act, 1947 both are beneficial and social legislation, and the main purpose is to

regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970. Moreover, Section 12 of Contract Labour (Regulation & Abolition) Act, 1970, bars a contractor to execute any work through contract, except in circumstances where there are license issues to the said contractor and the contravention of the same is also punishable under the said Act.

59. Further, the learned Tribunal also relied upon the findings of the judgment of the Constitution Bench of Hon'ble Supreme Court in ***Steel Authority of India Ltd. Vs. National Union Waterfront Workers***[3],where the Hon'ble Court laid down circumstances where the contract workers would be held to be the workmen of the principal employer.

60. It was observed by learned Tribunal that the Management of petitioners has presented work orders and invoices dated January 2014, issued to M/s E Centric Solutions Pvt. Ltd. and M/s AIP Company Pvt. Ltd. However, the management did not provide any agreements or contracts awarded to contractors or empaneled vendors from 2006 onwards to clarify if these were for project completion or manpower supply. Additionally, the management did not submit work orders or invoices for the period from 2008 to 2013. MW-1 admitted that the petitioner no.1's management never obtained a license under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. A tripartite agreement among the petitioners was

[3] (2001) 7 SCC 1

executed in December 2008, yet the workers had been employed since 2006 at petitioner no.1's dispensaries and offices in Delhi and beyond. If the workmen were employees of the contractors or vendors, the control and supervision of their work would have been managed by these contractors, not petitioner no.1.

61. It is further observed that despite changing around 12 vendors/contractors from 2006 to the present, the same workers remained employed, suggesting that the contracts by petitioners were sham and camouflage. It is established that if a contract is found to be sham, the contract laborers are considered employees of the principal employer.

62. Thus, the contracts between petitioner no.1 and the contractors were found to be a facade, and the workers were effectively employees of the principal employer, CGHS. Moreover, the learned Tribunal held that petitioners failed to bring any evidence on record in support of their contention that the petitioners are not direct employees of the workmen.

63. Adverting to the issue of regularization of the workmen on the posts they have been working on, the learned Tribunal observed the settled law that contractual workforce cannot seek regularization as a fundamental right, even if they are working for long duration.

64. The learned Tribunal then referred to the judgment of ***Hari Nandan Praead and another vs. Food Corporation of India***[4], where the Court had made an exception to the above said settled law on the grounds that if the

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[4] (2014) 7 SCC 190

principal employer engages employees for the same post as the contractual employee, under some employment policy or the other the benefit shall be given to the forth working workmen as well and they cannot be discriminated on by the employer.

65. To further elaborate on the scope of exception to the rule of regularization, the learned Tribunal referred to the findings of the judgment, ***Project Director, Department of Rural Development v. its Workmen through D.P.V.V.I.E. Union***[5], wherein the Court had observed that if the Principal employer is found to be engaged in unfair labour practices then, such aggrieved workmen can be regularized. It further held that the judgment of ***Uma Devi (supra)*** held that with respect to the regularization of employees, an exception was carved out for those contractual employees who, though appointed regularly, had completed at least 10 years of service.

66. The learned Tribunal held that upon perusal of the aforesaid judgment, the ordinary rule followed is that the Labour Court should not issue directions for regularization of the workmen engaged working on casual daily wage basis, irrespective of his length of service, unless there is a scheme policy of management and similar situated workmen have been regularised by the employer management under the said policy. Therefore, the tribunal is vested with the power to curb unfair labour practices being adopted by the employer.

[5] W.P(C) No. 17555/2005 - decided on 29/3/2019

67. Whilst adjudicating upon the issue pertaining to the regularisation of the workmen, the learned Tribunal observed that most of the workers have been working regularly with petitioner no.1 since 2006. It further opined that it is evident from the testimony of MW1 and MW2 that in February, 2018 Management of CGHS used to sanction Rs.25508/- per Data Entry Operator inclusive of GST of 18% and vendor was charging about 10 to 15% out of the same and then remaining amount was paid to the workmen therefore, the workmen have been deprived the status & privilege of permanent/regular employee, as the workmen working as Data Entry Operator - a technical post - are getting lesser than the wages/salary of a clerk/Lower Division Clerk in any Govt. Organization.

68. Accordingly, it was held that employing workmen as '*Badlis'*, casually or temporaries for long durations amounts to unfair labour practice in terms of Section 2 (ra), read with 5th schedule of the Industrial Disputes Act, 1947. Hence, the petitioners had adopted unfair labour practices in depriving the workmen the status of a permanent employee as well as the benefits which are accrued to the permanent employees.

69. In view of the aforesaid discussion, the learned Tribunal held that the workmen are entitled to wages as per the pay-scale alongwith consequential benefits from the date of their initial appointment as applicable to the Data Entry Managers and the Operation Manager.

70. The learned Tribunal further placed reliance on the testimony of MW2, who had deposed that the claimants/workmen fulfill the essential qualifications for being engaged as Data Entry Operator/Operation Manager

as well as admitted that a large number of posts of Lower Divion Clerks are lying vacant with the petitioner.

71. Accordingly, the learned Tribunal deemed it necessary in the interest of justice to direct the Management of petitioner no.1 to issue orders regarding regularization of the claimants/workmen from the date of their initial engagement i.e., from the year 2006.

72. Now adverting to the merits of the instant petition.

73. Firstly, this Court shall examine the issue whether the respondent no. 1 to 3 were working under the supervision of the petitioners.

74. At this juncture, it is apposite for this Court to understand the jurisprudence behind the principles establishing an employer–employee relationship and upon whom the onus to prove the same lies. The Hon'ble Supreme Court in this regard in the judgment titled ***Kanpur Electricity Supply Co. Ltd. v. Shamim Mirza,***[6], observed the following:

> "*20. It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management.*"

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[6] (2009) 1 SCC 20

75. Furthermore, the Coordinate Bench of this Court in ***Babu Ram v. Govt. (NCT of Delhi)***[7], observed the following:

> "*8. It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514 has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the company to prove that he was not an employee. Para 48 to 50 of the said judgment reads as under:—*
>
> > *"48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union, (1973 Lab IC 398) the Kerala High Court held The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.*
> >
> > *49. In Swapan Das Gupta v. The First Labour Court of W.B. (1976 Lab IC 202 (Cal)) it has been held: Where as person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.*
> >
> > *50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously*

[7] 2018 SCC OnLine Del 7243

erroneous or perverse."

x x x

12. A Single Bench of this Court has held in Automobile Association of Upper India v. PO Labour Court, 2006 LLR 851 that appointment of workman can be proved by producing the appointment letter, written agreement, attendance register, salary register, leave record of ESI or provident fund etc. by the workman. The workman can also call the record from the management. Para 14 and 15 of the said judgment read as under:—

> *"14. Engagement and appointment in service can be established directly by the existence and production of an appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave record, deposit of provident fund contribution and employees state insurance contributions etc. The same can be produced and proved by the workman or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records. The workman can even make an appropriate application calling upon the management to call such records in respect of his employment to be produced. In these circumstances, if the management then fails to produce such records, an adverse inference is liable to be drawn against the management and in favour of the workman.*
>
> *15. In the instant case, the workman filed an affidavit by way of evidence on the 29th April, 1993 and closed his evidence. Thus, the only evidence in support of the plea of employment was the self serving affidavit filed by the workman and nothing beyond that to support his claimed plea of service of seven years. In view of the principles laid down by the Supreme Court in Range Officer v. S.T. Hadimani, II (2002) SLT 154 such*

affidavit by itself is wholly insufficient to discharge the burden of proof on the workman."

76. Upon perusal of the aforementioned judgments, it can be summarily stated that the burden of conclusively establishing that a claimant was employed with a particular management, primarily rests upon the claimant, however the degree of proof which is required to be established, varies on a case-to-case basis.

77. It has been further held that a claimant can prove his appointment to service either directly by adducing evidence in the form of an appointment letter or an agreement in writing in such regard and/or by adducing circumstantial evidence in the form of attendance register, salary registers, leave record, PF contribution and ESI contributions.

78. Considering the facts of the present case, the settled principles of law and the evidence adduced by the parties, this Court is of the considered view that the position with regard to the burden of proving the relationship of employee-employer is no longer *res integra*, the said burden primarily rests upon the person who asserts its existence.

79. This Court is further of the view that as per the settled position of law, the claimant must prove the existence of the employee-employer by way of either direct evidence (producing a letter of appointment or a written agreement between the workman and the management) and/or via circumstantial evidence of incidental/ancillary nature (attendance register,

salary register, leave records, deposit of PF contribution, ESI, entry card, etc.), failing which the claim may not be entertained by the Court.

80. In the instant petition, this Court finds it germane to advert to the testimony of the workmen as per which, the workers were sent to training by petitioner no.1. Moreover, they produced various documentary evidence on record, such as reliving and joining certificates, transfer/posting documents, ID cards, and experience certificates issued by the petitioner no.1.

81. Moreover, as per the testimony of petitioner no.1's witness i.e., MW-1, the petitioner no.1 never obtained a license under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. Furthermore, the witness failed to produce any document proving that the workmen were appointed by the contractors. The said testimony of MW-1 also revealed that petitioner no.1 issued memos and managed leave applications for the workmen. Moreover, the petitioner no.1 admitted that from 2006 till 2014, three contractors have changed, however, the workmen remained same.

82. MW-2's testimony further confirmed that despite changing 12 contractors over time, the workers remained the same and worked under the petitioner no.1's supervision. Moreover, he admitted that petitioner no.1 was appointing, terminating, transferring, issuing appreciation letter, etc. to the workers. He further admitted that the claimants were working under the supervision and control of the petitioners.

83. This Court is of the view that the petitioner no.1 was exercising direct control over the workers since, it was issuing Identity Cards, Experience

letters, joining as well as reliving letters, etc. Moreover, it was issuing memos to the workers and managed the leave applications of the workers.

84. It is further held that the workers are under the direct supervision of the petitioner no. 1 since, they are managing all the aspects related to the working of the workers.

85. Since, the petitioner's witness has himself admitted that despite change in the contractors, the workers were constant over the years, the abovesaid fact clearly elucidates that the contract between the workers and the contractors is sham and it is the petitioner no. 1, who is the employee of the workers.

86. Moreover, there is no such active/key role assigned to the said contractors, it the petitioner no. 1, who is directly interacting with the workers as well as assigning them the work.

87. It is further held that the learned Tribunal correctly held that the petitioners failed to provide evidence supporting their claim that the workmen were not direct employees.

88. Now adverting to the issue of regularization of the respondent nos. 1 to 3/workers.

89. At this juncture, this Court finds it necessary to reiterate the settled position with respect to the regularization of the workmen.

90. The contractual employment should not be used as a reason to deny workers the benefits and security that come with regularization. Furthermore, a continuous period of service creates a legitimate expectation of permanency. The Hon'ble Supreme Court held that employees who have

been continuously employed in an organization for a significant period, even if initially hired on a temporary or contractual basis, should not be treated as temporary forever. This principle aims to prevent the exploitation of workers by keeping them in a perpetual state of temporary employment.

91. Moreover, the industrial workers who perform duties identical to those of regular employees, as per the principle of equal pay for equal work, as laid down in the judgment of ***State of Punjab vs. Jagjit Singh***[8], mandates that employees performing similar duties should receive equal treatment. The Supreme Court emphasized on the aspect that any differentiation in pay and benefits for employees doing the same work violates Article 14 and Article 39(d) of the Constitution of India. It was further observed by the Hon'ble Court that the denial of equal pay for equal work is not just a matter of statutory interpretation but a constitutional mandate ensuring fairness and justice in labour practices.

92. The Hon'ble Supreme Court in the judgment of ***Randhir Singh vs. Union of India*** [9] held that the temporary or contractual status should not be a ground for depriving workers of equal pay even if they perform the same duties as regular employees.

93. As per the judgment of ***Chief Conservator of Forests and another v. Jagannath Maruti Kondhare***[10], wherein it was held that the contractual workers who are working for longer duration are entitled for regularisation. The relevant extract of the judgment is reproduced herein below:

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[8] (2017) 1 SCC 148
[9] (1982) 1 SCC 618
[10] **AIR 1996 SC 2898**

"25. To bring home his submission regarding the unjust nature of the relief relating to regularisation, Shri Bhandare sought to rely on the decision of this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : JT (1992) 1 SC 394] We do not think that the ratio of this decision is applicable to the facts of the present case inasmuch as the employment of persons on daily-wage basis under Jawahar Rozgar Yojna by the Development Department of Delhi Administration, whose claim for regularisation was dealt with in the aforesaid case was entirely different from that of the scheme in which the respondents-workmen were employed. Jawahar Rozgar Yojna was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. It is because of this that the Bench observed that the object of the Scheme was not to provide right to work as such even to the rural poor, much less to the unemployed in general. As against this, the workmen who were employed under the schemes at hand had been so done to advance objects having permanent basis as adverted to by us.

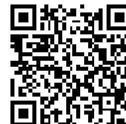
***26.** Therefore, what was stated in the aforesaid case cannot be called in aid at all by the appellants. According to us, the case is more akin to that of State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] in which this Court favoured the State Scheme for regularisation of casual labourers who continued for a fairly long spell — say two or three years, (paragraph 51). As in the cases at hand the workmen concerned had, by the time they approached the Industrial Courts worked for more or less 5 years continuously, no case for interference with this part of the relief has been made out.*

***27.** We may also meet the contention that some of the workmen had been employed under the Maharashtra Employment*

Guarantee Act, 1977. As to this, we would first observe that no factual basis for this submission is on record. Indeed, in some of the cases it has been pointed out that the employer had not even brought on record any order of appointment under this Act. This apart, a perusal of this Act shows that it has not excepted the application of the Industrial Disputes Act, 1947. This is apparent from the perusal of Section 13 of this Act. It may be further pointed out that this Act having been brought into force from 1978, could not have applied to the appointments at hand most of whom are of the year 1977.

***28.** Insofar as the financial strain on the State Exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lakhs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood of Rs 300 crores — a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forest Department or any other Department of the Government.*

***29.** We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has*

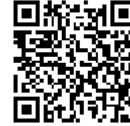


been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forest Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases."

94. Recently, in the case of ***Vinod Kumar & Ors. Etc. v Union of India & Ors, [11],*** the Hon'ble Supreme Court held that when the workman has been appointed as per the proper procedure of recruitment, and the said recruitment is done lawfully, then the workman can be regularised. The relevant extract of the judgment is reproduced herein below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their

[11] SLP(C) Nos.22241-42 of 2016 dated 30th January, 2024



case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

> *"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of SLP(C) regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in*

> > *cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."*
>
> *8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations."*

95. In the instant petition, the workman had been working with the petitioner no, 1 since the year 2006. Moreover, the petitioner's witness admitted the fact that the workmen were qualified to be appointed at the position of Lower Division Clerks and the work they were doing were of perennial nature. Moreover, the workers were selected by a proper procedure.

96. Accordingly, it is held that the learned Tribunal rightly held that the workers are entitled for regularization from the initial date of their joining i.e., 2006.

CONCLUSION

97. It is a settled legal proposition that this Court should exercise its power under Article 226 very cautiously and sparingly, and in exceptional

circumstances, only in a given case where it is demonstrated that there is something palpably erroneous.

98. This Court is of the view that the respondents no. 1 to 3/workers were under the supervision of the petitioners, and the same is supported by the testimony of the workmen and documentary evidence like reliving and joining certificates, transfer/posting documents, ID cards, and experience certificates issued by petitioner no.1. The testimony of petitioner no.1's witness, MW-1, further revealed that petitioner no.1 never obtained a license under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970, and it issued memos and managed leave applications. Moreover, and despite changing three contractors from 2006 to 2014, the same workmen remained employed.

99. It is further held that petitioner no.1 exercised direct control over the workers by managing all aspects of their employment, therefore, the contract between the contractors and the workers were sham and bogus. The learned Tribunal correctly held that the petitioners failed to prove that the workmen were not direct employees of petitioner no.1.

100. The impugned order dated 23rd August, 2019 passed by the Presiding Officer CGIT-cum-Labour Court-1 Rouse Avenue Court New Delhi does not suffer from any illegality and merits no interference of the writ Court. Accordingly, the impugned award is upheld.

101. This Court is of the view that learned Tribunal rightly held that the workers are entitled for regularization from the initial date of their joining i.e., 2006 since the workman had been working with the petitioner no. 1

since the year 2006. Moreover, the petitioner's witness admitted the fact that the workmen were qualified to be appointed at the position of Lower Division Clerks and the work they were doing were of perennial nature. Moreover, the workers were selected by a proper procedure.

102. In view of the discussions of facts and law, this Court finds no force in the propositions put forth by the petitioners and therefore, the present writ petition is not a fit case for interference under the extraordinary writ jurisdiction of this Court, and therefore, the present writ petition is liable to be dismissed since the same is bereft of any merits.

103. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

104. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 29, 2024
rk/db/av