



5. Shri Lokendra Kapil Proprietor, Lok Sahil Enterprises, H-15/B, Chitaranjan Marg, C-Scheme, Jaipur (Raj.)

-----Respondents/Contemnors

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For Petitioner(s) : Mr. Arvind Gupta with  
Mr. Sohan Sharma

For Respondent(s) : Mr. C.S. Sinha with  
Ms. Kanika Wadhvani for  
Mr. R.D. Rastogi, ASG  
Mr. Krishna Verma for Airport  
Authority

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### HON'BLE MR. JUSTICE SAMEER JAIN

#### Order

**14/02/2024**

1. With the consent of learned counsel for both the sides, the present bunch of petitions, involving common questions of fact and law, are jointly taken up for final disposal. For the purpose of recording arguments and/or submissions, the lead file is taken as S.B. Civil Writ Petition No. 4586/1999 titled as Harishankar Sharma and Ors. vs. Union of India and Ors.

2. The instant petition is filed with the following prayers:-

*"It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to accept and allow the present writ petition and to*

*i)issue an appropriate writ, order or direction the petitioners be continued in the services of the respondents from the date of appointments irrespective of their being a deliberate break in service after every six months by the respondents in violation of Articles 14 & 16 of the Constitution of India;*

*ii)declare by appropriate writ or direction that the petitioners are in continuous service since their respective date of appointments since the petitioners have been shown as contractor labour under the Airport Authority.*



iii) issue writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction that the petitioners be entitled to get benefit of minimum pay scale of the posts on which they are discharging their duties.

iv) issue writ, order or direction to put the petitioners on the regular pay scales alongwith other consequential benefits of permanent employees from the date of their initial appointment.

v) any other appropriate writ, order or direction which the Hon'ble Court deems fit in the facts and circumstances of the case, may be passed in favour of petitioners.

vi) cost be awarded to the petitioners."

3. It is submitted by learned counsel for the petitioners that the petitioners were rendering their services with the respondent-Airport Authority of India. The nature of the work rendered was menial yet integral, such as the day to day maintenance of the premises, like cleaning and gardening. Learned counsel submitted that the petitioners were gainfully employed through a placement agency/contractor, for a substantial period of time. During the said period, the administrative control qua the petitioners work, was within the control of the respondents. Furthermore, as per the version of the petitioners, by and large, a majority of the documents regarding the petitioners administration of work were also counter-signed by the principle employer i.e. respondents. Therefore, considering the fact that the petitioners rendered their services with the respondents for a considerable long period of time as Class-IV employees, a vested right of employment accrued in favour of the petitioners. In support of the arguments advanced, reliance was placed upon the dictum of the Hon'ble Apex Court as enunciated in **HSEB vs. Suresh and Ors: AIR**



**1999 SC 1160, Air India Statutory Corporation and Ors. vs. United Labour Union and Ors.: (1997) 9 SCC 377 and International Airport Authority Employees Union and Ors. vs. International Airports Authority of India and Ors.: AIR 2001 SC 276.**

4. While placing reliance upon the above-referred judgments, it was contended that the fundamental duty of the Court is to give shape and offer to the long, regular and sustained work undertaken by the petitioners. The Courts ought to pierce the veil and recognize the employer-employee relationship which exists between the petitioners and the respondents on account of the work so rendered, which often is camouflaged by the labeled contractual engagement. Lastly, learned counsel for the petitioners further submitted that after having taken note of the judgments relied upon herein-above, this Court vide order dated 04.05.2000 had granted an *ex-parte* stay in favour of the petitioners, which was subsequently confirmed, as the application filed by the respondents under Article 226(3) for vacation of stay was dismissed on 17.04.2001. Despite the same, the respondents proceeded to terminate the certain select workers, on account of which, the contempt petitions were preferred before this Court. Therefore, claiming equity and recognition of the work rendered and/or carried out by the petitioners, the petitioners have preferred the present petitions claiming reinstatement and regularization.



5. *Per contra*, learned counsel for the respondents, primarily for the contesting party i.e. Airport Authority of India, has submitted that there is an absence of an employer-employee relationship between the petitioners and the respondent. In this regard, learned counsel for the respondents submitted that the petitioners have categorically failed to place on record any appointment letter issued in favour of the petitioners by the respondents. Therefore, the petitioners have no *locus standi* to file the present petitions, as they are merely third parties and aliens to the contract which was entered into between the respondent-Airport Authority of India and the concerned placement agency/contractor. Moreover, the absence of any contract between the petitioners and the respondent-Airport Authority of India, goes on to show that the work rendered by the petitioners was of a contingent and non-recurring nature, which only pertained to seasonal maintenance, including small activities like electricity maintenance, gardening and cleaning. In support of the arguments advanced, reliance was placed upon the dictum of the Hon'ble Apex Court as enunciated in **K.K. Suresh and Anr. vs. Food Corporation of India** reported in **AIR 2018 SC 3905, Ganesh Digamber Jhambhrundkar and Ors. vs. State of Maharashtra and Ors.: Special Leave to Appeal No. 2543/2023.**

6. Heard learned counsel for both the sides, scanned the record of the petition and perused through the judgments cited at Bar.

7. Upon a considered perusal of the record, the following germane stipulations have come to light, namely:-

7.1 That the petitioners have categorically failed to place on record any appointment letter issued in favour of the petitioners



by the respondents, exhibiting the terms and conditions of their engagement, nature of work to be carried out etc.

7.2 That the petitioners are merely third parties and aliens to the contract which was primarily entered into between the respondent-Airport Authority of India and the concerned placement agency/contractor.

7.3 That privity of contract subsisted only between the respondent-Airport Authority of India and the concerned placement agency/contractor.

8. The Hon'ble Apex Court in **K.K. Suresh (Supra)**, has categorically held that contractual engagement does not create a vested right of employment in favour of the workers, engaged through a placement agency. The relevant extract of the said judgment is reproduced herein-under:-

*"In the first place, the Appellants failed to adduce any evidence to prove existence of any relationship between them and the FCI; Second, when the documents on record showed that the Appellants were appointed by the FCI Head Load Workers Co-Operative Society but not by the FCI then obviously the remedy of the Appellants, if at all, in relation to their any service dispute was against the said Society being their employer but not against the FCI; Third, the FCI was able to prove with the aid of evidence that the Appellants were in the employment of the said Society whereas the Appellants were not able to prove with the aid of any documents that they were appointed by the FCI and how and on what basis they claimed to be in the employment of the FCI except to make an averment in the writ petitions in that behalf. It was, in our opinion, not sufficient to grant any relief to the Appellants."*

9. In furtherance of the settled position of the law regarding the negative scope of regularization of contractual employees, the



Hon'ble Apex Court as recently as on 12.09.2023 in **Ganesh Digamber Jhambhrundkar (Supra)**, has held that the fact of having rendered their services for a long time by contractual employees, shall not create a vested right of employment in their favour. The relevant extract of the said judgment is reproduced herein-under:-



*"The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.*

*We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken."*

10. It is also noted that the respondent-Airport Authority of India is an extended hand of the Government of India and therefore, whilst absorbing and regularizing workers, no backdoor entries can be permitted. Rather, a due selection process in the public domain by way of an advertisement ought to be carried, in light of Article 14 of the Constitution of India.

11. Having penned down the foregoing observations, this Court deems it appropriate to hold that the judgments as relied upon by the counsel for the petitioners are not applicable, on account of the subsequent developments in law, as pronounced by the



Hon'ble Apex Court in **K.K. Suresh (Supra)** and **Ganesh Digamber Jhambhrundkar (Supra)** among others.

12. Therefore, considering the fact that no employer-employee relationship exists between the petitioners and the respondent-Airport Authority of India; that the petitioners have categorically failed to place on record any appointment letter issued in favour of the petitioners by the respondents; that the petitioners are merely third parties and aliens to the contract which was primarily entered into between the respondent-Airport Authority of India and the concerned placement agency/contractor; that contractual engagement does not create a vested right of employment in favour of the workers, engaged through a placement agency [Re: **K.K. Suresh (Supra)**]; that the fact of having rendered services for a long time by contractual employees, shall also not create a vested right of employment in their favour [Re: **Ganesh Digamber Jhambhrundkar (Supra)**]; that the respondent-Airport Authority of India is an extended hand of the Government of India, and therefore whilst absorbing and regularizing workers, no backdoor entries can be permitted and cumulatively looking to the overall facts, this Court deems it appropriate to dismiss the instant petition.

13. Howsoever, while dismissing the petitions, this Court deems it appropriate to observe that the petitioners had rendered their services with the respondent-Airport Authority of India for a considerable period of 15 years, despite the placement agencies having been changed in the subsisting period. Therefore, in the future, if there is any scheme of regularization/absorption, the



petitioners may prefer their applications for consideration, which may be decided by the respondent-Airport Authority of India, independently, without being prejudiced by any observations made by this Court. It is again made clear that the decision to absorb or not, shall purely be of the discretion of the respondent-Airport Authority of India, to be arrived at in exercise of their own voice or freedom.

14. Accordingly, in light of the aforesaid, the present bunch of petitions are dismissed. Pending applications, if any, stand disposed of.

(SAMEER JAIN),J

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