

(*BY SRI RAGHUVVEER R SHETTY, ADVOCATE FOR
SRI CHETAN MUNNOLI, ADVOCATE FOR R1 TO R6,8,11 AND 13 (VC)
V/O/DT: 24.01.2023 PETITION AGAINST R7 AND R9 IS
DISMISSED AS ABATED,
V/O/DT: 31.10.2023 PETITION AGAINST R10 AND R12 IS
DISMISSED AS ABATED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF CONSTITUTION OF INDIA PRAYING TO
QUASH THE IMPUGNED AWARD DTD.30.06.2012 PASSED BY
THE INDUSTRIAL TRIBUNAL, HUBLI, IN I.D.NO.55 OF 2007 AT
ANNEXURE-G TO THIS WRIT PETITION.

THIS PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 16TH JANUARY, 2024 AND COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE
FOLLOWING:

ORDER

1. Respondents raised an industrial dispute in ID
number 55/2007 on the file of Industrial Tribunal, Hubli. The
claim is based on the premise that the respondents have been
working continuously in the petitioner-Corporation since 1991
on a temporary basis. The respondents are discharging the

**Inserted vide court order dated:27.02.2024*

functions identical to the permanent employees and their work is perennial in nature. The respondents are not the contract labourers as defined under section 2(1)(b) of the Contract Labour(Regulation and Abolition) Act, 1970 ('Act of 1970' for short).

2. It is further claimed that the contractors projected by the petitioner-Corporation are not the contractors as defined under section 2(1)(c) of the Act of 1970.

3. The petitioner-Corporation opposed the claim for regularisation of the respondents on the premise that the respondents were never the employees of the petitioner-Corporation and there is no journal relationship of employer and employee between the respondents and the Corporation.

4. The Industrial Tribunal has concluded that the respondents have established the relationship as the workmen under the petitioner Corporation and directed the Corporation to take appropriate steps in accordance with the law to regularise the services of the respondents.

5. Aggrieved by the order passed by the Industrial Tribunal, the petitioner-Corporation is before this court in this petition under Article 227 of the Constitution of India.

6. Heard the learned counsel Sri.Ashok R.Kalyanashetty appearing for the petitioner-Corporation and Sri.Raghuveer Sattigeri, the learned counsel appearing for the contesting respondents No.1 to 6, 8, 11 and 13.

7. The learned counsel for the petitioner would submit that a contract entered into between the petitioner-Corporation and the contractors have been placed before the Industrial Tribunal and have been marked at Exs.M17 to M24. It is submitted that the payments made by the petitioner-Corporation to the contractors are evidenced in Exs.M55 to M94. It is further urged that on the premise that the petitioner-Corporation has not produced the attendance register pertaining to the employees, the Industrial Tribunal has drawn an adverse inference against the petitioner-Corporation and erroneously concluded that the relationship of the petitioner and the contesting respondents as employer and employee is established.

8. Learned counsel for the petitioner-Corporation would also urge that a finding is recorded on some issues against the respondents, without there being a challenge to the said finding; the respondents cannot contend that the said

findings are erroneous. He would also submit that the respondents have submitted a representation to the employer alleging that the contractor is not making payment and the said documents are the documents disputed by the respondents.

9. Learned counsel appearing for the respondents would submit that there is no agreement between the establishment and the contractor as contemplated under the Act of 1970. The agreements marked at Exs.M17 to 24 are bogus, sham and camouflage to defeat the claim of the respondents. The agreements produced by the employer are the agreements entered into for the construction of water supply unit, dam, road and staff quarters and not for supply of labourers in connection with the work for which the respondents are employed.

10. It is also urged that the documents relating to payments made to contractors said to have been produced by the petitioner- Corporation, are the documents post 2005, as such those documents cannot be considered as the documents evidencing relationship of employee and contractor as contended by the petitioner-Corporation.

11. It is also urged that till today, the contesting respondents are working under the petitioner-Corporation which would indicate that there is demand for work in the said posts and there is a vacancy since 1991, for such posts, and the respondents have been working in such posts since 1991 and all the conditions required for regularisation in terms of the law laid down by the Apex Court have been fulfilled.

12. The documents produced by the contesting respondents before the Industrial Tribunal namely the attendance register, work allotment register, quarter allotment register and the service register have not been disputed by the petitioner-Corporation and these documents clinch the issue in favour of the respondents.

13. It is also urged that if at all the contractor had employed the contesting respondents, the petitioner ought to have taken necessary steps to secure records from the register to be maintained by the contractor which is mandated under Rule 78 of The Contract Labour (Regulation & Abolition) Karnataka Rules, 1974 ('Rules, 1974' for short)

14. Learned counsel for the contesting respondents would contend that the representation alleged to have been

submitted by some of the contesting respondents are not proved and the respondents have not admitted it and it does not bear seal and signature of the Authority which has received the alleged representation and he would submit that even in the absence of formal appointment orders, the contention of the contesting respondents is to be appreciated that the employees are working and are discharging their service.

15. Reliance is produced on the following judgments in support of the contentions of the respondents:

- i. Workmen of Niligeri Coop. Mkt. Society Ltd., Vs. State of T.N. and others, (2004) 3 SCC 514*
- ii. Secretary, H.S.E.B. Vs. Suresh and others, (1999) 3 SCC 601.*
- iii. T.C.Mathai and another Vs. District & Sessions Judge, Thiruvananthapuram, Kerala, (1999) 3 SCC 614*
- iv. R.K.Panda and others Vs. Steel Authority of India and others, (1994) 5 SCC 304*
- v. Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others, (2001) 7 SCC 1*
- vi. The Management of National Aerospace Laboratories Vs. Engineering & General Workers Union and Another, ILR 2015 Kar 34*

- vii. *Tumakuru City Corporation Vs. Tumkuru Poura Karmikara Sangha (Regd.) and Others, Writ Petition No.28392/2018 DD 06.12.2022*
- viii. *The Mysore Electrical Industries Limited Vs. Engineering & General Workers Union, Writ Petition No.3788/2012 DD 23.02.2023*
- ix. *M/s.Bharat Heavy Electrical Ltd. Vs. State of U.P. and Ors., Supreme Court Reports (2003) Supp.1 S.C.R. 625*
- x. *Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others, (2006) 4 SCC 1*
- xi. *State of Karnataka and others Vs. M.L.Kesari and others, (2010) 9 SCC 247*
- xii. *Sheo Narain Nagar and Others Vs. State of Uttar Pradesh and Another, (2018) 13 SCC 432*

16. Learned counsel for the petitioner by way of reply would contend that the contention of the petitioner is squarely covered by the law laid down by the Apex Court in **UMADEVI's** case. He would also submit that certificates have been produced to show that there was registration under the Contract Labour (Regulation and Abolition) Act, 1970 and the very document produced by the labourers would establish the fact that they were labourers working under the contractor and

thus, only on the basis of the adverse inference, the Industrial Tribunal passed the impugned orders.

17. The admitted position is respondents were working in the petitioner-Corporation when the dispute was raised. The claim that they have been working since 1991-1993 is duly established. The moot question that is to be considered by this Court is whether the petitioner-Corporation engaged the services of the contesting respondents through contract labourers by following the provisions of Act of 1970 or not?

18. At this juncture, it is necessary to refer to the definition of "Contract Labour" and "Contractor" as defined in Section 2 of Act of 1970. Section 2(1)(b) of Act of 1970 defines the expression "Contract Labour" and Section 2(1)(c) of Act of 1970 defines the expression "Contractor" as under:

2. In this Act, unless the context otherwise requires – (1)

(b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;

(c) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

19. "Contract Labour" within the meaning of Section 2(1)(b) of the Act of 1970 is a labour employed in connection with the work of an establishment when he is hired in connection with such work by or through the contractor.

20. The "contractor" as defined in Section 2(1)(c) of Act of 1970 in relation to an establishment means a person who undertakes to produce a given result for the establishment other than mere supply of goods or articles of manufacture through contract labour or who supplies contract labour for any work of the establishment.

21. It is also relevant to note that Section 7 of the Act of 1970 provides for registration of certain establishments. Under Section 7 of the Act of 1970, the establishment which seeks to engage the services of contract labour should have a registration under the said provision. If the registration is

granted, then said establishment can hire the services of contract labourers.

22. Section 12 of the Act of 1970 provides for licensing of contractors under the Act. If an establishment which is registered under Section 7 is to hire the services of contract labourers, then the establishment has to enter into an agreement with contractors licensed under Section 12 of the Act of 1970.

23. The primary contention of the petitioner-Corporation is that the Corporation is registered under Section 7 of the Act of 1970 and the Corporation has hired services of contract labourers by entering into an agreement with licenced contractors. Thus, it is urged that the contesting respondents are not the regular employees and they are the employees of the contractors.

24. This Court has perused the records and considered the contentions raised at the bar.

25. As can be noticed from the records placed before the Industrial Tribunal, the petitioner-Corporation did not produce the registration certificates issued under Section 7 of the Act of 1970 for all years from 1991 to 2007. The

registration certificates issued under Section 7 of the Act of 1970 marked on at Ex.M2 is dated 15.12.1994, and at Ex.M3 and M32 are dated 17.11.2008, Ex.M34 is the certificate dated 15.12.1997, However the certificates at Ex. M39 to M53 are the certificates issued under Karnataka Shops and Commercial Establishments Act 1961. Thus, it is evident that not all the certificates so produced are the certificates under Section 7 of the Act of 1970. The said certificates cannot replace the requirement of the certificate under Section 7 of the Act of 1970.

26. During the course of hearing, when it was pointed out by the Court that the certificates produced by the petitioner-Corporation do not cover each year from 1991 to 2007, the petitioner-Corporation took adjournment to produce the registration certificates. Thereafter, on 05.01.2024, a memo is filed producing 5 registration certificates issued under Section 7 of the Act of 1970. Those certificates are dated 20.02.1989, 15.12.1984, 31.01.1995, 15.12.1997, 29.07.1998.

27. This Court has perused the aforementioned certificates issued under Section 7 of the Act of 1970. The certificates would reveal that the petitioner-Corporation obtained certificates to hire contract labourers for construction

of Kodsalli Dam and appurtenant work, construction of Kadra Dam and appurtenant work, maintenance of Kadra Dam powerhouse and civil rehabilitation work. It is also relevant to note that in certificate dated 15.12.1997, the nature of work is not specified however, it is mentioned that it is as per the separate list enclosed. The said list is not produced by the petitioner-Corporation.

28. It is admitted during the course of hearing that the certificates issued under Section 7 of the Act of 1970 are valid only for a year and there has to be a fresh certificate if the employer intends to hire the contract labourers.

29. As could be noticed from the language employed in Section 2(1)(c) read with Section 7(2) of the Act of 1970 and Rule 18(2)(d) of Contract (Labour and Regulation) Rules, 1971, and also the particulars prescribed in Form-II (before 2017 amendment), the employer has to disclose nature of work in which the contract labour is to be employed.

30. At this juncture, it is necessary to refer to the particulars of respondents No.1 to 6, 8, 11 and 13 relating to their joining date and nature of work as provided in Ex. W.15

Sl. No.	Name and Rank of the Respondents – Workmen	Date of Joining	Nature of work of Respondent Workmen	No. of years of Service in the petitioner Corporation
1.	Sri K N Ningegowda S/o Ningegowda – Respondent No.1	October, 1991	Garden Work	32 years
2.	Sri M Ramesh S/o Munappa Respondent No.2	December, 1991	Water Supply	32 years
3.	Sri M Nanjunda S/o Madaiah Respondent No.3	October, 1990	Water Supply	33 years
4.	Sri Yallappa S/o Siddappa Madhare Respondent No.4	September, 1993	Water Supply	30 years
5.	Sri Manjunatha, S/o Mariappa Respondent No.5	November 1993	Mason	30 years
6.	Sri Suresh Siddappa Salenavar Respondent No.6	December, 1992	Mason, Garden Work	31 Years
7.	Sri T.G.Lakshmiah, S/o Gaviaiah Respondent No.8	January, 1991	Guest House and Garden Work	32 Years
8.	Smt.Sushma W/o Sughunaravath Respondent No.11	June, 1997	Guest House and Garden Work	26 years
9.	Sri Appanna Channappa Chuncha Respondent No.13	March, 1987	Guest House and Garden Work	36 Years

31. Though Ex. W-15 is said to be the list of employees under the contractors, it can be treated as list of employees under the Contractors provided there is a valid agreement in conformity with the Act of 1970.

32. When the certificates issued under the Act of 1970 in favour of the Corporation are scrutinised and the nature of the work discharged by the respondents, it is evident that certificates issued by the petitioner-Corporation are not in respect of the jobs discharged by the contesting respondents. The claim made by the contesting respondents relating to the nature of job carried out by them is not controverted by producing the materials by the petitioner-Corporation.

33. The contractor as defined under Section 2(1)(c) of the Act of 1970 who is licensed under Section 12 can supply the labourers or can execute the work through contract labour only in respect of the work specified in the registration certificate issued under Section 7 of the Act of 1970. It is also relevant to note that the registration certificate enabled the petitioner-Corporation to hire contract labourers in respect of certain activities like construction of the building that is not pertaining to the work discharged by the petitioner-Corporation. The materials on record would also disclose that

the respondents were not employed for the construction of the building. However, they were employed for the maintenance of the buildings which have been constructed on the premises of the petitioner-Corporation. The certificates granted to the petitioner-Corporation under the Act of 1970 do not enable the petitioner-Corporation to employ contract labourers to maintain the buildings, gardens, and pipelines.

34. In addition, as can be noticed from the records, there are materials to show that the respondents were allotted quarters meant for the employees of the petitioner-Corporation. This aspect is not disputed by the petitioner-Corporation by placing the materials available with the petitioner-Corporation. However, the materials on record would indicate that the respondents were occupying the quarters meant for the employees of the petitioner-Corporation.

35. The learned counsel appearing for the respondents has invited the attention of this court to the cross-examination of WW-1 and WW-2. The attention of this Court is also drawn to the admission of MW-1 and MW-2 and also the documents marked at Exhibits W-1 and W-2 slips, W-15 particulars of employees working under contractor, W-19 to 30 - allotment registers, W-39 attendance register, W-40 work allotment

register. On consideration of these records, this Court is of the view that the Industrial Tribunal is justified in holding that the respondents were employed by the petitioner Corporation and not by contractors.

36. The documents at M-4 to M- 16, which are the letters of awards pertaining to civil works, and the documents at exhibit M-18 to M-24, the agreements executed between the Corporation and the contractor do not come to the aid of the petitioner Corporation to hold that the respondents were contract labourers. The register relating to the contract labourers required to be maintained under the applicable Rules are not produced. The contractors have not been examined by the petitioner Corporation to substantiate its claim.

37. Though an attempt is made to contend that the employees are occupying the quarters unauthorisedly and notices have been issued to some of them, what remains to be seen is respondents were occupying the quarters meant for the employees of the Corporation. This supports the claim of the respondents that they were employed by the petitioner Corporation.

38. Referring to exhibit M-55 to M-94, it is urged that these are the payments made to the contractors between 2003 to 2010 and same do not show that the payment was made towards the amount paid to contract labourers. Since the respondents claim to have been employed in 1991 -1993 the documents relating to payment made between 2003-2010 is of no consequence.

39. This being the position, it is not possible to hold that the petitioner Corporation was permitted to employ the contract labourers to discharge the work carried out by the respondents. Assuming that the petitioner Corporation has outsourced the labourers from the contractors taking shelter under the registration granted under the provisions of the Act of 1970, such act of the petitioner cannot be protected as the same is beyond the scope of the registration granted to the petitioner Corporation which enabled the petitioner Corporation to outsource the labourers through contractors. The petitioner Corporation could not have outsourced the labourers to carry out the maintenance work and other works discharged by the respondents. The petitioner Corporation was only permitted to hire labourers for the construction of the main building and

other structures that were required to carry out the activities of the Corporation.

40. The Tribunal has observed that the petitioner Corporation has not produced the registration certificates under the Act of 1970 for all the relevant periods and the industrial tribunal for that reason has drawn adverse inferences against the petitioner Corporation. Although the petitioner Corporation has come out with the statement that the documents are not available, such statement cannot be accepted. Given the fact that the documents are public records, the petitioner Corporation should have attempted to secure the records from the public office where the documents are maintained. Accepting that the concerned authority has issued an endorsement stating that the documents are not available, it only leads to the inference that the registration certificate was not granted in favour of the petitioner Corporation for the said period. This being the position, this Court is unable to accept that the petitioner Corporation throughout had the benefit of the exemption granted under the provisions of the Act of 1970.

41. This Court has considered the judgments relied on by the parties. Though, the petitioner Corporation tried to take shelter under the judgment of Apex court in ***Umadevi's*** case,

the facts of the case, and the documents placed on record would justify the claim of the respondents in terms of the law laid down in **Umadevi's** case. The respondents have established more than 10 years of continuous service and said service is without any aid of the interim order of the Court. The Corporation has not raised any dispute about the qualification of the respondents. Given the fact that they were working since 1991-1993 and still working (except those who have attained age of superannuation) during the pendency of this petition, this Court has to hold that the respondents were discharging the duty on account of vacancy. So far as sanction for the post is concerned, it is to be noticed that the petitioner is a Corporation and is not required to obtain a sanction from anyone else for the employing the respondents who were basically labourers.

42. Though, the petitioner Corporation laid much stress on the letters said to have been written by the respondents where they have allegedly admitted employment under the contractor, given the fact that the contract labour as required under the Act of 1970 is not established, alleged admission pales into insignificance. Though, no such specific contention is raised given the poverty, lack of education, awareness, and

the plight of respondents, possibility of extracting such letters from the respondents, by the petitioner Corporation with an assurance of providing some relief is also not ruled out. This court however not basing this judgment on such a possibility. The letters alleged to have been addressed by the respondents do not substitute or dilute the requirement of Act of 1970 applicable to avail the services of contract labours.

43. Though, it is urged on behalf of the Corporation that the respondents have not produced any appointment orders issued by the Corporation, said contention does not come to the rescue of the petitioner. The claim is not dependent on appointment orders but is based on the actual work done for the Corporation. If the appointment orders are not issued and in the grab of contract labourers (which claim is not established for the reasons recorded supra), and the respondents are made to work since 1991-93 till 2007 and beyond, then the fault lies with the petitioner Corporation in not issuing the appointment orders.

44. After having gone through the materials on record and the finding of the Industrial Tribunal, the provisions of the Act of 1970 and the judgments cited at the Bar, this Court is of the view that no case is made out to exercise power under the

limited scope under Article 227 of the Constitution of India.

Hence, the following:

ORDER

- (i) Writ petition is ***dismissed***.

- (ii) The impugned order dated 30.06.2012 passed by the Industrial Tribunal, Hubli in I.D.No.55/2007 is confirmed.

- (iii) Since the demand for regularisation is pending close to 20 years, the petitioner Corporation shall take steps to take appropriate action in terms of the directions issued by the Industrial Tribunal.

**Sd/-
JUDGE**

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