A.P.S.R.T.C. & Ors vs G. Srinivas Reddy & Ors on 24 February, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1465, 2006 AIR SCW 1108, 2006 LAB. I. C. 1302, (2006) 4 ALLMR 50 (SC), 2006 LAB LR 433, 2006 (2) UPLBEC 1438, 2006 (3) SCC 674, (2006) 2 JCR 227 (SC), (2006) 2 SCALE 539, 2006 (4) SRJ 148, 2006 (2) ALL CJ 1122, (2006) ILR (KANT) 2853, 2006 (4) ALL MR 50 NOC, (2006) 2 ESC 150, (2006) 2 PAT LJR 107, (2006) 2 LAB LN 516, (2006) 3 MAD LW 170, (2006) 2 LABLJ 425, (2006) 2 SCT 422, (2006) 3 SCJ 132, (2006) 2 UPLBEC 1438, (2006) 2 SUPREME 392, (2006) 111 FACLR 515, (2006) 2 JLJR 157

Bench: Arijit Pasayat, R. V. Raveendran

CASE NO.:
Appeal (civil) 3424 of 2000

PETITIONER:
A.P.S.R.T.C. & Ors.

RESPONDENT:
G. Srinivas Reddy & Ors.

DATE OF JUDGMENT: 24/02/2006

BENCH:
Arijit Pasayat & R. V. Raveendran

JUDGMENT:

J U D G M E N T RAVEENDRAN, J.

The Andhra Pradesh State Road Transport Corporation, first appellant, (for short 'the Corporation'), issued a Circular dated 1.9.1988 containing the guidelines for absorption of persons employed on casual basis/consolidated pay/piecemeal rate/work charged establishment, whose services had been ordered to be dispensed with, under an earlier Circular dated 2.7.1987. The said guidelines provided, inter alia, that such absorption shall be only against sanctioned vacancies, and that the benefit was to be extended only to those who had been engaged for more than one year. The Circular made it clear that benefit thereof will not extend to persons engaged by its contractors at Bus Stations and certain other categories of persons detailed therein.

2. The respondents herein filed W.P. No.14353/1991 claiming to be scavengers employed by the Corporation, seeking a direction for regularisation. That petition was disposed of by order 5.11.1991

with a direction to consider their cases in terms of the Circular dated 1.9.1988 and pass appropriate orders. The High Court did not examine the claim on merits.

3. To give effect to the said order, the Divisional Manager of the Adilabad Division of the Corporation sent a communication dated 14.7.1992 instructing the Depot Manager, Mancherial to verify the claims of the respondents (as they had claimed that they were working in the said Depot) and to send him the necessary information in the prescribed proforma. Alleging inaction thereafter, the respondents herein again approached the High Court in W.P. No.30220/1997 for a declaration that the Corporation's failure to take action in pursuance of the said letter dated 14.7.1992 was illegal and praying for a direction to the Corporation to absorb them into its service.

4. A learned Single Judge of the High Court by order dated 17.3.1998 disposed of Writ Petition No.30220/1997 at the stage of preliminary hearing, without examining the matter on merits, by directing the Corporation to consider the claim for absorption in accordance with the guidelines contained in the Circular dated 14.7.1992. In the said order, the High Court proceeded on the erroneous assumption that the letter dated 14.7.1992 of the Divisional Manager was the Circular containing the guidelines relating to absorption.

5. In pursuance of it, the claim of one of the respondents - B. Madhuraiah (third respondent herein), was considered. He was required to appear before a Selection Committee on 21.4.1999. He appeared before the Committee and admitted that he had worked only under a contractor and not under the Corporation. The Regional Manager, Adilabad Division, therefore, passed an order dated 21.4.1999 holding that the third respondent was not entitled to claim absorption. He held that the provisions of the Circular dated 1.9.1988 providing for absorption were inapplicable to the third Respondent, as he had not directly worked under the Corporation. He recorded a finding that third respondent was employed as a contract labour by a contractor, receiving payment through the contractor, and that there was no relationship of employee and employer between him and the Corporation, either in regard to assignment of work, or performance of work, or payment of remuneration.

6. Feeling aggrieved, the respondents approached the High Court for the third time, by filing W.P. No.17678 of 1999 for quashing the said order dated 21.4.1999 and seeking a direction to the Corporation to treat them as ex-casual employees and absorb them under the terms of the Circular dated 1.9.1988. A learned Single Judge by order dated 23.8.1999 disposed of the said petition at the admission stage, quashing the said order dated 21.4.1999 and directing the Corporation to pass a fresh order on the representation of the respondents herein. The learned Single Judge was of the view that the respondents herein could not be denied relief on the ground that they were employed as contract labour, as such a contention was not taken by the Corporation in the earlier petition (W.P. No.30220/1997). The learned Single Judge held that when the direction in W.P. No.30220/1997 was to 'consider' the case for absorption in terms of the guidelines contained in Circular dated 14.7.1992, the Corporation could not reject the claim by taking a stand that respondents were employed as contract labour and the Circular dated 1.9.1988 was inapplicable.

7. The order of the learned Single Judge was challenged by the Corporation in Writ Appeal No.1422 of 1999. The Corporation contended that the Learned Single Judge committed an error in quashing

the order dated 21.4.1999. It was pointed out that the respondents were employed as contract labour and the Circular dated 1.9.1988 did not permit absorption of contract labour, but only permitted absorption of those directly employed by the Corporation on casual basis or for a contractual period, on daily wages or on consolidated salary or piece rate basis or under work changed establishment. The Division Bench dismissed the Corporation's appeal vide order dated 30.9.1999. It accepted the contention of the Corporation that respondents were employed as "contract labour". It also impliedly accepted the contention of the Corporation that the respondents were not entitled to absorption under the Circular dated 1.9.1988. It, however, held that the work for which the respondents were employed as contract labour, that is to clean the buses and to sweep the bus stand premises, was perennial in nature and not seasonal. Purporting to rely on the decisions of this Court in Air India Statutory Corporation v. United Labour Union [1997 (9) SCC 377] and Secretary, Haryana State Electricity Board v. Suresh [1999 (3) SCC 601], it held that there was direct relationship of master and servant between the principal employer (Corporation) and contract labour (Respondents) and, therefore, the respondents were entitled to absorption. It did not, consider whether in the absence of a notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the CLRA Act') prohibiting contract labour, there could be a direction for absorption, even if the Respondents were contract labour. Thus, the ground on which the Division Bench upheld the decision of the learned Single Judge was different from the ground on which the writ petition was disposed of by the Single Judge. The said order of the Division Bench is challenged by the Corporation in this appeal by special leave.

8. In Air India (supra), this Court had held that though there is no express provision in the CLRA Act for absorption of contract labour, when engagement of contract labour stood prohibited on issuance of a notification under Section 10(1) of the CLRA Act, a direct relationship was established between the workers (contract labour) and the erstwhile principal employer, and the principal employer is obliged to absorb the workers. It also held that if the High Court finds that workmen were engaged in violation of the provisions of CLRA Act or were continued as contract labour, in spite of the prohibition notification issued under Section 10(1) of the CLRA Act, the High Court can, in exercise of its power of judicial review, mould the relief properly and direct the principal employer to absorb the contract labour, instead of leaving the workmen in the lurch, and it was not necessary for the workmen to seek a reference of the dispute relating to their absorption under section 10 of the Industrial Disputes Act, 1947. In Haryana State Electricity Board (supra), this Court following Air India, had held that where the work for which contract labour is employed, was perennial in nature (as contrasted from seasonal), contract labour system should be abolished by issuing a notification under section 10 of CLRA Act, so as to render the contract labourers, the direct employees of the principal employer. On the facts of the case, it was also held that the contract system prevailing in the Electricity Board (appellant herein) was not genuine, but a mere camouflage (to deprive workers, of the benefits under various labour enactments) and therefore, the court can pierce the veil and visualize the direct relationship between the Board and the contract labour. Consequently, this Court upheld the relief of reinstatement granted to Safai Karamcharis by the High Court.

9. In Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors. [2001 (7) SCC 1], a Constitution Bench of this Court overruled the decision in Air India (supra) and held that

where contract labour are engaged in connection with the work in an establishment and employment of such contract labour is prohibited by issue of a notification under Section 10(1) of the CLRA Act, there was no question of automatic absorption of the contract labour working in the establishment and the principal employer cannot be required to absorb the contract labour. This Court also held that on a contractor engaging contract labour in connection with the work entrusted to him by the principal employer, it does not culminate into a relationship of 'master and servant' between the principal employer and the contract labour. This Court held that whether the contract labour system was genuine or a mere camouflage has to be adjudicated only by the Industrial Tribunal/court and not by the High Court in its writ jurisdiction. We extract below the relevant portions of the principles summed up by this Court :

> "(5). On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
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> (6). If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

We have used the expression "industrial adjudicator"

> by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

[Emphasis supplied]

10. In this case, there was no notification under section 10(1) of CLRA Act, prohibiting contract labour. There was also neither a contention nor a finding that the contract with the contractor was sham and nominal and the contract labour working in the establishment were, in fact, employees of the principal employer himself. In view of the principles laid down in Steel Authority, the High Court could not have directed absorption of respondents who were held to be contract labour, by assuming that the contract labour system was only a camouflage and that there was a direct relationship of employer and employee between the corporation and the respondents. If respondents want the relief of absorption, they will have to approach the Industrial Tribunal/Court and establish that the contract labour system was only a ruse/camouflage to avoid labour law benefits to them. The High Court could not, in exercise of its jurisdiction under Article 226, direct absorption of respondents, on the ground that work for which respondents were engaged as contract labour, was perennial in nature.

11. The respondents were not also entitled to the relief of absorption/regularization on the basis of the Circular dated 1.9.1988, as it specifically excluded contract labour. The order dated 5.11.1991 in the first round (WP No.14353/1991) and the order dated 17.3.1998 in the second round (W.P. No.30220/1997) did not examine the status of the respondents, nor recorded a finding that they were entitled to absorption. They merely disposed of the writ petitions with a direction to consider the representation/claim of the respondents for absorption. Therefore, if the Corporation on considering the claims of respondents found that they were not employed by the Corporation, but were contract labour, who were not entitled to seek absorption under the Circular dated 1.9.1988, the Corporation was justified in rejecting their claim for absorption. The only remedy of respondents, as noticed above, is to approach the Industrial Tribunal for declaring that the contract labour system under which they were employed was a camouflage and therefore, they were, in fact, direct employees of the Corporation and for consequential relief. The Corporation has stated in the Special Leave Petition that such a question was already raised by the Trade Unions and was pending in I.D.No.1/1996 on the file of the Industrial Tribunal, Hyderabad.

12. Learned counsel for the respondents made an alternative submission that the relief granted to respondents, may be sustained on the reasoning adopted by the learned Single Judge. He submitted that having regard to the order in W.P. No.30220/1997 which had attained finality, the Corporation had no choice but to consider the cases of Respondents for absorption by treating them as causal labour employed by the Corporation. This takes us to the effect of the orders dated 5.11.1991 and 17.3.1998 made in the earlier writ petitions, directing the Corporation to "consider" the cases of the respondents.

13. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner/s in the writ petitions.

13.1) Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/ irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

13.2) The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

13.3) Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

13.4) We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

13.5) There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also

not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court's direction to 'consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders 'to consider'.

14. Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.

15. In this case, the respondents approached the High Court seeking a direction for regularization/absorption in the year 1991. That petition (WP No.14353/1991) was disposed of, apparently, at the admission stage by order dated 5.11.1991, with a direction to 'consider' the representations of Respondents without examining the question whether the petitioners in the writ petition were entitled to the relief of regularization/absorption and without fixing any time frame for deciding the matter. Though the Divisional Manager, Adilabad, by letter dated 14.7.1992 sought information and verification of claims by the concerned depots, with the intention of giving effect to the order dated 5.11.1991, no further action was taken. This led to filing of the second petition (W.P. No.30220/1997) wherein the respondents herein sought a direction to the concerned authority to take a decision on the question of absorption. The second petition was also disposed of at the preliminary hearing stage by order dated 17.3.1998, without examining the claim of respondents on merits. The said order dated 17.3.1998 proceeded on an erroneous assumption that the letter dated 14.7.1992 (by which the Divisional Manager, Adilabad, sought information from the concerned Depot Managers about the respondents herein) was the Circular containing the guidelines for absorption, and disposed of Writ Petition No. 30220/1997 by directing the authority concerned to consider the cases of the respondents herein for absorption in terms of the guidelines contained in the letter dated 14.7.1992 and decide the matter within three months.

16. We find that at that stage, the authority considered the case of the third respondent and passed a reasoned order dated 21.4.1999 rejecting the claim on the ground that the third respondent was not a direct employee, but was a contract labour, and was not therefore entitled to absorption under the Circular dated 1.9.1988. This led to the third round of litigation in W.P. No.17678/1999 wherein the prayer was for quashing the said order or rejection dated 21.4.1999 and for direction to absorb them into service in terms of the Circular dated 1.9.1988 Again, the High Court at the admission stage, disposed of the matter on an erroneous conclusion that the order dated 21.4.1999 was contrary to

the decision in the second round (Order dated 17.3.1998 in W.P. No.30220/1997) and directed the Corporation to pass fresh orders on the representations made by the respondents. The learned Single Judge proceeded on the assumption, without basis, that the order dated 17.3.1998 in the earlier petition (WP No. 30220/1997) had held that Respondents were entitled to the benefit of the Circular dated 1.9.1988, when in fact there was no such finding or direction. Therefore, the direction of the learned Single Judge, as confirmed by the Division Bench, to consider the cases of respondents under the Circular dated 1.9.1988 cannot be sustained. It is unfortunate that in this process, the Respondents have been in courts for nearly 15 years.

17. For the reasons stated above, we allow this appeal, set aside the order dated 30.9.1999 passed by the Division Bench of the A.P. High Court in Writ Appeal No.1422 of 1999 and dismiss Writ Petition No.17678/1999 filed by the respondents. Liberty is, however, reserved to the respondents to approach the Industrial Tribunal/Court for relief, if any, in accordance with law. Parties to bear their respective costs.