

Supreme Court of India

A. Hamsaveni And Ors., A. Soosai ... vs State Of T.N. And Anr. on 3 August, 1994

Equivalent citations: JT 1994 (4) SC 651, (1994) ILLJ 1192 SC, 1994 (3) SCALE 656, (1994) 6 SCC 51, 1994 Supp 2 SCR 404, 1995 (1) SLJ 208 SC, 1994 (2) UJ 442 SC

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Bench: R Sahai, N Singh

JUDGMENT R.M. Sahai, J.

1. The questions that arise for consideration in these petitions, filed by approximately 1200 persons claiming to be helpers and working for long time with Electricity Board are whether these petitions can be entertained under Article 32 of the Constitution and a direction be issued to opposite parties to regularise their services and absorb them in the post of helpers in keeping with the guidelines and the criteria laid down by Justice Khalid Commission in pursuance of an order passed by this Court.

2. The petitioners are not members of any Union. They have approached this Court as individuals and claim that they have been working as contract labourers and performing the task of helpers, therefore, they are entitled to be regularised and paid the salary which is paid to a regular employee as the meagre amount that is being paid to them by their contractors is so low that it results in exploitation and is consequently violative of constitutional guarantee under Articles 14, 16 and 21 of the Constitution. It is alleged that in the year 1986 the Board passed orders prescribing qualifications for various posts including the post of helpers which was challenged by some of the unions but the petitioners did not choose to question its correctness as in 1986 there were 9,000 regular posts of helpers which were sought to be filled through Employment Exchange which did not effect them. The High Court did not find any merit in the petitions filed by the unions challenging the rule prescribing minimum qualification, consequently, those petitioners approached this Court by way of special leave petition in which parties agreed for appointment of Mr. Justice Khalid as one man Commission to examine and recommend the criteria for absorbing and regularising the services of helpers. After submission of the report the Board approached this Court for clarification that the Commission report was confined to only those persons who were parties to the writ petition. These applications were decided on 30th April 1991 and following order was passed :

The Court's order dated 10th April, 1991 is clear enough to indicate that the report of Mr. Justice Khalid, former Judge of this Court is binding between the parties. The report deals with the workmen who were parties to the writ petition as well as other workmen similarly situated. It cannot be said that the order of this Court confined only to the workmen who were parties to the writ petition as now contended for the Board.

3. Till now the petitioners were not on scene. Since the Court had observed that its earlier order by which the Commission was constituted applied to other similarly situated five trade unions workers of Tamil Nadu Electricity Board who had not got impleaded before the Commission till submission of the report intervened for impleadment. Their application was rejected by the Commission on 20th July 1991. The Commission observed, it cannot be that the interveners did not know that two new parties had got themselves impleaded before the Commission. It is impossible to accept the case that the interveners were in the dark about the scope of the Commission and about the day-to-

day proceedings before the Commission. That such a large number of alleged workmen with strong unions with political backing would have been unaware of what took place before the Commission and what was the scope of the Commission, "cannot be accepted without reservation.

The Commission in the same order explained the misapprehension of the Unions about the order passed by this Court in April 1991 and observed as under :

The argument fails to take note of the circumstances under which the above observations were made by the Supreme Court. In the objection petition filed by the Board, the contention was that the Commission could deal with only workmen who were parties to the "Writ Petition". This means that the Board wanted the benefits of the report to be extended only to the first petitioner before the Commission. It was in this context that the Supreme Court observed that the report dealt with workmen who were parties to the Writ Petition as well as the other workmen similarly situated. The pointed reference here was in answer to the objections filed by the Board regarding the two other petitioners before the Commission and it was in this context that the Supreme Court observed that its order could not be understood to be confined only to the workmen who moved it by the writ petition. This observation, therefore cannot be extended to secure benefits to all the workmen who were not before the Commission till the report was submitted. There was no agreement before me that the intervenor Unions consisted of workmen similarly situated.

After rejecting the application the Commission proceeded to identify the helpers in the manner provided in its report and issued letters for holding interview on 23rd August 1991. Now some of the petitioners who till now were nowhere claim to have addressed individual letters requesting the Board to absorb them. It was in fact creating ground for further action as the petitioners having sent letters in August approached this Court by way of I.As. in the original S.L.P.(Civil) No. 1820 of 1990 by which the Commission was constituted which were rejected on 23rd September 1991 by the order extracted below :

The applications are rejected. The rejection of these applications does not mean that the rights of the applicants, if any are prejudiced. However, we make it clear that these petitioners are not covered by our previous orders in these cases.

Taking advantage of the observation in the order that the dismissal of the applications was without prejudice to their rights, if any, the petitioners filed these petitions.

4. Facts are self demonstrative. No reliance can be placed on the averment that they did not approach earlier as they were not affected. Even if it be so they are to thank themselves. Sleeping over the rights, if there were any, with eyes open does not cure laches. In any case when the Commission publicised and it became known to every helper of the State the Commission had been constituted for specific purpose of identifying and regularising service of helpers then what prevented the petitioners from approaching the Commission if they too were helpers as claimed by them as intervention was permitted by the Commission, of even, those who were not parties in the writ petition or special leave petition. We agree with the learned Counsel for the respondents that in view of the observations made by Khalid Commission that the proceedings were held openly and it

was known to one and all in the State that the Commission was constituted for purpose of deciding the criteria for appointment of helpers in the service of the Board and their service conditions and the norms on which those who were working should be regularised it was incumbent on the petitioners to have approached the Commission by way of individual applications even if they were not sponsored by the Union. The claim of the petitioners that since the Commission was concerned only with those petitioners who had approached this Court by way of special leave petition, does not appear to be correct as the Commission in the report itself has mentioned that even others who had intervened and whose claim was found to be justified were permitted to intervene and were impleaded and the orders were passed in their favour as well.

5. Apart from this a perusal of the Khalid Commission Report would indicate that the Commission had observed that the rule by which certain qualifications were prescribed for helpers in 1986 was not justified as it would have resulted in throwing out those who were working for long time. After determining that the qualification laid down by the Board would not stand in the way of those workers who were working since long it proceeded to lay down the method to identify such workers and the norms on which they could be regularised. Despite these guidelines laid down by the Commission the petitioners have not made any effort by placing any material which could establish that they were helpers who were working as such for long time even prior to 1986. The claim that they are not seeking any relief except a direction either to the Khalid Commission or to appoint any independent body to determine their identity is misconceived. The purpose of a writ petition under Article 32 is not a fishing or roving enquiry. The petition can succeed only if the petitioners make out a case of violation of any fundamental right. But what is claimed is a chance to establish their claim. In absence of any material to show that the petitioners were employees of the Board or they satisfied even the norms laid down by the Commission which could entitle them to claim that they were similarly situated the petitioners are not entitled to any relief. In *R.K. Panda and Ors. v. Steel Authority of India and Ors.* a bench of this Court of which one of us (Hon'ble N.P. Singh, J.) was a member, observed, However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such question, only on the basis of the affidavits.

There is no whisper in the petitions if there was any contract entered between the petitioners and their employers. Further the petitioners who had an opportunity to appear before the Commission but did not avail of it cannot be permitted to approach this Court after an observation was made by this Court in different context and try to get the proceedings reopened. Such speculative and stale litigation is harmful to the society and should be put to an end with strong hand. The petitions are imaginary in nature without any vestige of any violation of any fundamental right.

6. In the result, all these petitions fail and are dismissed. We are refraining from imposing exemplary costs as the petitioners are workers who appear to have been victims of improper guidance.