12/20

**IN THE SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**PRESENT**
Mr. Justice Maqbool Baqar
Mr. Justice Amin-ud-Din Khan

AFR

**Civil Petition No. 449/2019**
(Against the judgment dated 07.12.2018 of the Islamabad High Court, Islamabad passed in WP No. 3074/2017)

***M/s Sui Southern Gas Company Limited*** *Petitioner(s)*

***Versus***

***Registrar of Trade Union & others*** *Respondent(s)*

For the Petitioner(s) : Mr. Asim Iqbal, ASC
Mr. Kasim Mirjat, AOR

For the Respondent(s) : Mr. Junaid Akhtar, ASC

Date of Hearing : 07.01.2020

**ORDER**

**Maqbool Baqar, J**. Through order dated 16.08.2017 the respondent No. 1 allowed the application filed by the respondent No. 3-Union for including the names of their members, who were contract employees, in the list of voters, before holding a referendum. The respondent No. 3 is a registered Industry/Trade Union in the petitioner's establishment, with the aim and object, *inter alia*, to create harmony amongst the workers, maintain cordial relations with the employer/management, and to ameliorate the working relations of the members and workers in the establishment. Before the Registrar it was contended by the respondent No. 3, that there were more than three thousand workers employed on contract basis by the petitioner who have

been performing their duties on various posts of permanent nature out of whom five hundred employees are members of the respondent No. 3 Union. These employees were engaged by the petitioner either directly or through some Labour Contractor, and that since they were performing their duties on the posts which are of permanent nature they are entitled to be included in the voters' list of a trade union and by not so including their names such employees shall be deprived of their fundamental rights.

2. For rejection of the respondent No. 3's above request, the petitioner contended that since the employees, sought to be registered as voters, are not the employees of the petitioner, but of a manpower/labour contractors, such employees, in view of Section 19(5) of the Industrial Relations Act, 2012 ("**IRA 2012**") cannot be so registered. It was contended that in terms of the said provision, only those workers, who had completed three months service, as direct employees of the petitioner, were eligible to participate in the referendum. It was claimed that the petitioner had acquired services of the said workers through a manpower/labour contractor, in order to cater to the petitioner's manpower requirements, and further that in terms of the agreement executed between the manpower/labour contractors, the said contractors are directly responsible for the management, control and supervision of such employees. The respondent No. 3's aforesaid application was through order dated 28.03.2017 granted by the respondent No. 1. A writ petition filed by the petitioner before the High Court against the aforesaid order was, through a consent order dated 12.07.2017, disposed of, by remanding the case to the respondent No. 1 for deciding the case after hearing the

parties and taking into consideration the agreements executed between the petitioner and the labour contractors, as well as those executed between the labour contractors and the aforesaid workers, in accordance with law. This time again the respondent No. 1 through order dated 16.08.2017 allowed the respondent No. 3's application and ordered inclusion of the said workers in the voters' list so that they may be able to participate in the referendum for the determination of the Collective Bargaining Agent in the petitioner's establishment. A Constitution Petition filed by the petitioner against the said order was dismissed by the learned Islamabad High Court through the impugned judgment.

3. We have heard the learned counsel for the parties and perused the record of the case with their able assistance. The question involved in the present case is as to whether a worker/workman engaged for rendering service in an establishment through a labour contractor, is eligible to be registered/enlisted as a voter to participate in a referendum for choosing a Collective Bargaining Agent in the said establishment, or not. In terms of Section 19(4)(a) of the IRA, 2012 every employer, on being required by the Registrar, is obliged to submit a list of all the workmen employed in his establishment, except those whose period of employment is less than three months, whereas Section 19(5) of the IRA, 2012 requires the Registrar to include in the voters list the name of every workman, whose period of employment, computed in accordance with Subsection (4) is not less than three months, and is also not a member of any of the contesting trade union, copies of which list the Registrar is required to send to each of the contesting trade unions at least

four days before the date fixed for the referendum. It can thus be seen that the only requirement for the membership of a union, is being a workman, and for being registered as a voter, the period of employment of such workman in the establishment should not be less than three months. Whereas the term "worker" and "workman" has been defined by Section 2(xxxiii) of the IRA, 2012, as a person not falling within the definition of employer, who is employed in an establishment, or industry for hire or reward, either directly or through a contactor. It can therefore be seen that for an employee to fall under the definition of a worker or workman, it is wholly irrelevant whether he has been employed directly or through a contractor, and since in view of the relevant provisions of the IRA, 2012, as noted above, there remains no ambiguity that the only requirement for an employee in an establishment to become a voter, is his being a worker or a workman, in such establishment for a period of not less than three months and nothing more, therefore to say that since the workmen under discussion were engaged in the petitioner's establishment through some labour contractors, their registration/enlistment as voters is violative of IRA, is wholly misconceived and untenable.

4. Although, in view of the foregoing discussion, the question as to whether a person has been employed/engaged by the establishment directly or through a contractor, is of no relevance, however it may be beneficial to note here that the services, the workers enlisted as voters are rendering, are of security guards janitors, gardeners and of ditching/backfilling and of meter reading etc. These functions they perform for the benefit of the Company. They are undisputedly rendering such services

since many years. Dealing with the question as to whether the employees of a labour contractor can be considered as the employees of the establishment where they work through labour contractor, this Court in the case of **Fauji Fertilizer Company Ltd. through Factory Manager** v. **National Industrial Relations Commission through Chairman and others** *(2013 SCMR 1253)* after examining and analysing the relevant law in that regard has laid down as follows:

> "16. The crux of the above case law is that:-
> (a) the word 'employed by the factory' are wide enough to include workmen employed by the contractors of the company;
> (b) the employees of the contractor shall be the employees of the company if the contractor engaged the workers for running of the affairs of the company and not for some other independent work which has no concern with the production of the company;
> (c) if the employees are working in a department of the company which constituted one of the principle organs of the company, the machines belong to the company, the raw material is supplied by the company and the said department is controlled by the supervisors of the company, the employees of the contractor shall be the employees of the company;
> (d) the employees, engaged directly or through a contractor, would be deemed to be the employees of the company for whose benefit they perform functions;
> (e) even though 'control' test is an important test, it is not the sole test, a multiple pragmatic approach weighing up all the factors for and against the employment has to be adopted, including an "integration" test; and
> (f) if the contract is found to be not genuine and a device to deprive the employees from their legitimate rights/benefits, the so called contract employees will have to be treated as employees of the company.
>
> 17. Normally, the relationship of employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumed control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of

> the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company".

In the case of **State Oil Company Limited** v. **Bakht Siddiqui** *(2018 SCMR 1181)* the contention of the petitioner-company, refusing and resisting regularization of its employees on the ground that the respondents were not its employees and were in fact engaged by a service provider/contractor, could not prevail before this Court, and the Court instead upheld the order of the High Court directing regularization of the services of respondents. The relevant portion of the above judgment reads as under:

> "As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence...."

5. The instant case also falls within the four corners of the principle enunciated by this Court in the case of **Fauji Fertilizer Company Ltd** (*supra*). The workers enlisted as voters are performing their duties and functions for the benefit of the petitioner's establishment and are admittedly so serving since many years. The purported arrangement/contract between the petitioner and their purported labour contactors cannot be allowed to be used as a device to deprive the said workers of their legitimate and fundamental right of forming a union and or becoming a part thereof.

6. The learned Judge of the High Court has rightly upheld the order of the respondent No. 1 through the impugned judgment and we uphold the same. The petition is accordingly dismissed.

*Islamabad, the*
*7th January, 2020*
*Rizwan*

***"Approved for reporting"***