

GAHC010264032013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6609/2013

VARTAK LABOUR UNION
REGD. UNDER THE TRADE UNION ACT WITH REGD. OFFICE AT TEZPUR,
P.O. TEZPUR, DIST- SONITPUR, AND REPRESENTED BY ITS GENERAL
SECRETARY

VERSUS

THE UNION OF INDIA and 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF DEFENCE, SOUTH BLOCK, NEW DELHI-11

2:THE SECRETARY
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
TRANSPORT BHAWAN
SANSAD MARG
NEW DELHI-110001

3:THE BORDER ROADS DEVELOPMENT BOARD
THROUGH THE SECRETARY TO GOVT. OF INDIA
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
4TH FLOOR
B WING SENA BHAWAN
NEW DELHI-110105

4:THE CHIEF ENGINEER
VARTAK DIVISION
TEZPUR
DIST- SONITPUR
ASSAM
C/O 99 APO

5:THE COMMANDANT
EASTERN BASE WORKSHOP DIVISION
TEZPUR C/O 99 APO

6:COMMANDANT
ASSTT. GARRISON ENGINEERING DIVISION
TEZPUR
DIST- SONITPUR
ASSAM
C/O 99 APO

7:OFFICER COMMANDING THE EASTERN STORES DIVISION
TEZPUR
SONITPUR
ASSAM
C/O 99 AP

Advocate for the Petitioner : MR.R MAZUMDAR

Advocate for the Respondent : MR.S C KEYAL

Linked Case : MC/2945/2014

UNION OF INDIA and 4 ORS.

VERSUS

SARAT SAIKIA and ORS.

Advocate for : MR.A GANGULY

Advocate for : ASSTT.S.G.I. appearing for SARAT SAIKIA and ORS.

Linked Case : WP(C)/3873/2017

BORDER ROADS ORGANIZATION LABOURERS UNION
NE REGION
REP. BY ITS PRESIDENTHEAD OFFICE AT BASANTIPUR
TEZPUR
P.O AND P.S- TEZPUR
DIST- SONITPUR-784001
ASSAM PRESENTLY AT PARVATI NAGAR
P.O- CHANDMARI
P.S- LATASIL
TEZPUR
ASSAM
PIN- 784001

VERSUS

THE UNION OF INDIA and 9 ORS.
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF DEFENCE
SOUTH BLOCK NEW DELHI- 110001

2:THE SECRETARY TO THE GOVT OF INDIA
MIN OF LABOUR AND EMPLOYMENT
AP BHAWAN NEW DELHI- 110001

3:THE SECRETARY TO THE GOVT OF INDIA
MIN OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS
SOUTH BLOCK
NEW DELHI- 110001

4:THE SECRETARY TO THE GOVT OF INDIA
MIN OF TRIBAL AREAS
SHASTRY BHAWAN
DR. RAJENDRA PRASAD ROAD
NEW DELHI- 01

5:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
DEPTT.
OF PLAIN TRIBES AND BACKWARD CLASSES
DISPUR GUWAHATI-06 ASSAM

6:THE BORDER ROADS DEVELOPMENT BOARD
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF ROAD TRANSPORT AND HIGHWAYS
4TH FLOOR B WING SENA BHAWAN
NEW DELHI-05

7:THE DIRECTOR GENERAL BRO
SEEMA SADAK BHAVAN
RING ROAD
DELHI CANTONMENT
NEW DELHI- 110001

8:THE CHIEF ENGINEER P
VARTAK BRO C/O- 99 APO
TEZPUR DIST- SONITPUR ASSAM
PIN- 784001

9:THE COMMANDANT
THE GENERAL RESERVE ENGINEERING FORCE
DIGHI CAMP PUNE- 411015

10:THE CHIEF SECRETARY
GOVT OF ARUNACHAL PRADESH
ITANAGAR
ARUNACHAL PRADESH
PIN-

Advocate for : MS.B MAHANTA
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA and 9 ORS.

Linked Case : WP(C)/5029/2014

SARAT SAIKIA and 16 ORS

VERSUS

THE UNION OF INDIA and 4 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF DEFENCE
SOUTH BLOCK
NEW DELHI- 110001.

Advocate for : MR.S K SINGH
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA and 4 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date : 18.03.2024

ORDER

Heard Mr. Rajesh Mazumdar, learned counsel for the petitioner in WP(c)6609/2013; and Ms. R. Sahun, learned counsel for the petitioner in WP(c)3873/2017. None has appeared for the petitioner in WP(c)5029/2014. Also heard Mr. R. K. D. Choudhury, learned DSGI, appearing on behalf of all the respondents in all these 3(three) writ petitions.

2. The above-noted writ petitions being based on similar facts and the relief sought for are one and the same, are taken-up analogously for final consideration vide the present order.

WP(c)6609/2013:

3. The writ petitioner by way of instituting the present proceeding, has prayed for an interference with the communication, dated 07.09.2012, by which the respondent authorities, for the reasons assigned therein, expressed their inability to frame a scheme for regularization of casual workers engaged in the Border Roads Organization(BRO). The petitioner has also prayed for a direction upon the respondent authorities for initiating appropriate steps for considering the cases of the members of the petitioner Union for regularization of their services.

WP(c)5029/2014:

4. The petitioners, herein, have also prayed for similar relief as prayed for by the petitioner in the proceeding of WP(c)6609/2013.

WP(c)3873/2017:

5. The petitioners, herein, have also prayed for similar relief as prayed for by the petitioner in the proceeding of WP(c)6609/2013.

6. The issue involved in the above-noted 3(three) writ petitions being the same; the facts as involved in the proceeding of WP(c)6609/2013, are taken note of for the purpose of adjudication of the issues so arising in the said proceeding:

7. WP(c)6609/2013 has been instituted by the VARTAK Labour Union(VLU).

It has been contended in the said writ petition that the members of the said Union were so engaged by the Border Road Organization(BRO) as casual paid labourers and their members were working in the said organization for a considerable period of time. The petitioner has also prayed for appropriate orders towards regularizing the services of their members who are basically engaged in the establishment of the Eastern Base Workshop; in the establishment of the Assistant Garrison Engineer and in the establishment of the Eastern Store Division (GREF), 523 Supply SS & TC Detachment A (GREF) which is contended to be a permanent establishment.

8. The petitioner Union being aggrieved by the inaction on the part of the respondent authorities in not regularizing the services of its members had approached this Court by way of instituting Civil Rule No. 1839/1993. This Court vide order, dated 27.08.1996, proceeded to dispose of the said writ petition by directing that while continuing with the services of the members of the Union who had put in more than 5 years of services, steps be taken for regularization of the members of the Union who had rendered more than 5 years in service within a period of 6(six) months from the date of the said order. Being aggrieved with the said directions as passed by this Court, the Union of India assailed the said order, dated 27.08.1996, by way of instituting a writ appeal being W.A. No. 548/1996 before this Court. The Division Bench of this Court, vide order, dated 22.09.1997, upon considering the issues so arising in the matter, proceeded to dispose of the said writ appeal by directing the appellants, therein, to consider the case of the employees who are working in the organization for more than 5 years, in view of the circulars holding the field for regularization of their services and with further direction that the casual

labourers so engaged shall be allowed to continue to work in the organization till they attain their eligibility for coming within the purview of the circular holding the field for regularization of their services.

9. The said order as passed by this Court in WA No. 548/1996, was assailed by the Union of India before the Hon'ble Supreme Court in Civil Appeal No. 944/1999. The Hon'ble Supreme Court vide order, dated 19.02.1999, was pleased to allow the said appeal by interfering with the directions passed by this Court in WA No. 548/1996. The matter was thereafter remanded back to the High Court by restoring the WA No. 548/1996 on file of the High Court with a further request to this Court to reconsider the appeal on merits. The said WA No. 548/1996 was thereafter taken-up for further consideration and this Court vide order, dated 27.03.2001, on consideration of the issues so involved, proceeded to dispose of the same by directing the respondents, herein, to consider the cases of the members of the Union in terms of the scheme as contained in the Office Memorandum, dated 02.02.2001 and to consider the cases of the Casual Paid Labourers thereunder, for regular recruitment to the post in Grade-D of the respondent Organization. The Union of India, thereafter, filed a review petition in the matter being R.P. No. 25/2001 and the said review petition on consideration, was vide order, dated 22.01.2003, dismissed. Being aggrieved; the Union of India assailed the directions as passed by this Court vide order, dated 27.03.2001, in WA No. 548/1996, before the Hon'ble Supreme Court in the proceedings of Civil Appeal No. 2129-2130/2004. The Hon'ble Supreme Court vide its judgment, dated 04.03.2011, on consideration of the issues arising therein, proceeded to interfere with the directions as passed by this Court in WA 548/1996. However, the Hon'ble Supreme Court considering

the fact that the Casual Workers were being so engaged for a considerable period of time, directed the Union of India to consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by the Border Road Organization(BRO) for execution of its on-going projects.

In pursuance to the direction as passed by the Hon'ble Supreme Court in the case of ***Union of India v. VARTAK Labour Union***, reported in ***(2014) 4 SCC 200***; the Government of India in the Ministry of Road, Transport & Highways, Border Roads Development Board, proceeded, vide communication, dated 07.09.2012, made an endorsement to the effect that the casual labourers not being engaged against any regular establishment and there being no regular budget for their wages in the annual budget of the organization and the wages of such casual labourers being paid out of the funds earmarked for the works in which they were deployed depending upon the workload or as provided by the departments by whom the work is entrusted to the Border Road Organization(BRO) which was stated to be a work-charged organization; the GREF being engaged in the sovereign function of the State and on an average, 90000 Casual Paid Labourers being engaged on daily wage basis, consideration of such large number of Casual Paid Labourers for regularization, being not practicable and possible owing to non-provisioning/ availability of funds, absence of vacancies, the claim of the members of the petitioner organization for regularization of their services, was held to be not acceptable.

10. It is, at this stage, to be noted that against the violation of the directions

passed by the Hon'ble Supreme Court in the case of **VARTAK Labour Union**(supra); a contempt petition being Cont. Pet.(c)Nos. 102-103/2013 was so instituted by the present petitioner Union and the same was considered by the Hon'ble Supreme Court and vide order, dated 30.08.2013, and noticing the communication, dated 07.09.2012, and thereafter, holding that the respondents having considered enacting an appropriate regulation/scheme but they being not in a position to enact such a regulation/scheme for the reasons so stated; the respondents were held to have not willfully disobeyed the directions passed by this Court in the above-noted case i.e. **VARTAK Labour Union**(supra) and accordingly, the contempt petition came to be so dismissed. However, liberty was granted to the petitioner Union to question the correctness or otherwise of the endorsements dated 07.09.2012, before an appropriate forum. Accordingly, the present proceedings have been instituted by the petitioners, herein.

11. Reiterating the facts as noticed hereinabove; Mr. Mazumdar, learned counsel for the petitioner in WP(c)6609/2013, has submitted that the members of the VARTAK Labour Union(VLU), i.e. the petitioner, herein, having been so engaged in establishments which are permanent in nature; the directions as passed by the Hon'ble Supreme Court would not be applicable in the case of the petitioners, herein, and accordingly, the communication, dated 07.09.2012, would also have no application in their cases in-as-much as the communication, dated 07.09.2012, has dealt with the matter generally and has not taken into consideration the cases of the casual workers who are engaged in the permanent establishments of the Border Road Organization(BRO).

12. Mr. Mazumdar, learned counsel, has further submitted that the members of the petitioner Union, are not engaged in the construction activities of the Border Road Organization(BRO) but are engaged in the Eastern Base Workshop and other permanent establishments for the last around more than 30 years. It is also submitted that the works discharged by the members of the petitioner Union are of permanent and perennial nature and the same are already provided for in the budgets as prepared by the respondents and accordingly, it is submitted that the endorsements as contained in the communication, dated 07.09.2012, would not be applicable insofar as the members of the petitioner Union is so concerned.

13. It is submitted by Mr. Mazumdar, learned counsel, that the Eastern Base Workshop carries out the role of overhauling vehicles, equipments, plants, engines of all the projects of the eastern sector providing full repairing cover to all local and transit vehicles. Accordingly, it is submitted that the said nature of works cannot be said to be seasonal or temporary in nature and the same being discharged by the members of the petitioner Union at a particular location, it is stated that the said works discharged by the members of the petitioner Union, is different from the works so required to be discharged by the Casual Paid Labourers so engaged by the Border Road Organization(BRO) for carrying-out its construction activities which admittedly are of intermittent and temporary in nature.

14. The learned counsel for the petitioners in WP(c)5029/2014 and WP(c)3873/2017, have adopted the arguments made by Mr. Mazumdar, learned

counsel for the petitioner in WP(c)6609/2013, and have submitted that this Court would be pleased to interfere with the communication, dated 07.09.2012, and require the respondents to prepare a scheme for absorption of the casual workers as working in the Border Road Organization(BRO), more particularly, the Casual Paid Labourers who are so working in the permanent establishments of the said organization.

15. Per contra, Mr. Choudhury, learned DSGI, has submitted that the prayer as made by the petitioners in these 3(three) proceedings being already covered by the decision of the Hon'ble Supreme Court in the case of **VARTAK Labour Union**(supra); the present writ petitions are hit by the principles of *res judicata* and constructive *res judicata* and accordingly, no further consideration is called thereon, by this Court.

16. It has been submitted by the petitioner Union that the distinction as being sought to be so made by the petitioners that the Casual Paid Labourers working in permanent establishments of the Border Road Organization(BRO) would have to be given a different treatment than the Casual Paid Labourers who are so engaged in the construction activities; Mr. Choudhury, learned DSGI, has submitted that the same is clearly misplaced and not based on the facts as involved in the matter. It has been submitted that the Eastern Base Workshop admittedly is a permanent establishment, however, the budget is directly reciprocally varied upon the dependent projects catering to the needs of the technical and machinery support required from time to time. It is also submitted that all projects undertaken by the Border Road Organization(BRO) are so

undertaken on temporary basis to fulfill the requirements of strategic roads, bridges and buildings and hence, the requirement for enrollment of the Casual Paid Labourers are always dependent on the projects so executed by the Border Road Organization(BRO). With regard to the other organizations so identified by the petitioners in WP(c)6609/2013; Mr. Choudhury, learned DSGI, has submitted that the other organizations are also dependent on the projects so being executed by the Border Road Organization(BRO) and accordingly, the Casual Paid Labourers so engaged therein, are also engaged on works which are intermittent and temporary in nature based on the workload and therefore, cannot be termed as continuous/ permanent in nature.

17. Mr. Choudhury, learned DSGI, has further submitted that the demand for the Casual Paid Labourers is always fluctuating depending on the workload at a particular period of time. He has also submitted that the Border Road Organization(BRO) has not sub-classified the Casual Paid Labourers basing on the location of their such engagements and has accordingly submitted that for the engagement of the Casual Paid Labourers, there is no regular budget provision for their wages in the annual budget of the organization and the wages are paid out of the funds earmarked for the works in which they are so employed depending upon the workload as being provided by various departments by whom the work is so entrusted.

18. Mr. Choudhury, learned DSGI, has further placed his reliance on a decision of the Hon'ble Supreme Court in the case of Union of India & ors. v. All India Trade Union Congress & ors. reported in (2019) 5 SCC 773, wherein, by

following the decision of the Hon'ble Supreme Court in the case of **VARTAK Labour Union**(supra); prayers similar to the one made in the present proceedings, came to be rejected by the Hon'ble Supreme Court.

19. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

20. The grievance of the petitioners as raised in the above-noted writ petitions is non-regularization of their services even after having rendered their services for a considerable period of time. The petitioners, accordingly, have prayed for a direction upon the respondents for initiation of appropriate steps towards provincialization of their services. As noticed hereinabove; prayers similar to the one now made in the present proceedings was also involved in the proceedings before the Hon'ble Supreme Court in the case of **VARTAK Labour Union**(supra). The Hon'ble Supreme Court upon examining the issue, was pleased, vide order, dated 04.03.2012, to set aside the directions as passed by this Court vide order, dated 27.03.2001, in WA 548/1996. It is to be noted that this Court had directed the respondent authorities for provincialization of the services of the Casual Paid Labourers against the vacant posts in Group D of the said organization. However, the Hon'ble Supreme Court in the case of **VARTAK Labour Union**(supra); had required the Union of India to consider enacting an appropriate regulation/scheme for regularization/absorption of the services of the Casual workers engaged by the Border Road Organization(BRO) for execution of its on-going projects.

21. It is to be noted that in the proceeding of **VARTAK Labour Union**(supra), the issue was so raised pertaining to all the Casual Paid Labourers so engaged by the Border Road Organization (BRO) for the purpose of execution of its various projects. There was no sub-classification made in the said decision pertaining to the Casual Paid Labourers so engaged by the Border Road Organization(BRO) in the establishments now contended to be permanent in nature by the petitioners, herein. The directions as issued by the Hon'ble Supreme Court in the case of **VARTAK Labour Union**(supra), to the Union of India for enacting an appropriate regulation/scheme, was considered by the Union of India and vide communication, dated 07.09.2012, after holding that it would not be practicable or feasible to frame a scheme for the Casual Paid Labourers so engaged by the Border Road Organization(BRO) which was contended to be around 90000 personnel; proceeded to hold that it was not possible to accede to the request for framing of an appropriate regulation/scheme for regularization of the services of the Casual Paid Labourers so engaged in the respondent organization.

22. At this stage; it is relevant to take note of the submission made by Mr. Choudhury, learned DSGI that the Border Road Organization(BRO) does not sub-classify the Casual Paid Labourers based on the nature of their employment and/or in the establishments in which they are so engaged. As the said issue was so pending, a similar issue arose before the High Court of Uttarakhand at Nainital wherein an organization whose members were engaged as casual labourers in Border Road Organization(BRO) had instituted the proceedings for regularization of their services. The High Court having allowed the said writ petitions, the Union of India had assailed the same before the Hon'ble Supreme

Court in the case of ***Union of India & ors. v. All India Trade Union Congress & ors.*** The Hon'ble Supreme Court vide order, dated 15.03.2019 [reported in (2019) 5 SCC 773)], following the decision of the Hon'ble Supreme Court in the case of ***VARTAK Labour Union***(supra), proceeded to reject the directions so passed in the matter by the High Court of Uttarakhand at Nainital.

23. In the above view of the matter and there being a categorical pronouncement of the issue made by the Hon'ble Supreme Court; this Court is not in a position to accept the prayers as made by the petitioners in the above-noted writ petitions, for a direction for regularization of the services of the Casual Paid Labourers and accordingly, applying the decisions of the Hon'ble Supreme Court as contained in the case of ***VARTAK Labour Union***(supra); as well as in the case of ***All India Trade Union Congress & ors.***(supra); the relief as sought for by the petitioners in the present proceedings, cannot be granted by this Court.

24. The distinction as sought to be drawn by Mr. Mazumdar, learned counsel, in respect of the members of the petitioner Union in WP(c)6609/2013, as noticed hereinabove, cannot also be considered in-as-much as the Hon'ble Supreme Court in the case of ***VARTAK Labour Union***(supra), while considering the issues so arose; which also involved the issues raised by the members of the present petitioner Union and no distinction having been made between the Casual Paid Labourers engaged by the Border Road Organization(BRO) in its construction activities as well as those engaged by it in its permanent establishments; this Court cannot now draw the said distinction.

25. The above aspect of the matter is also not being considered in view of the categorical statements made by Mr. Choudhury, learned DSGI, who, by referring to the affidavits filed in the matter by the respondents, has submitted that the Border Road Organization(BRO) does not sub-classify its Casual Paid Labourers basing on the nature of their employment.

26. In view of the above conclusions reached by this Court in the matter; these 3(three) writ petitions are held to be devoid of any merit and accordingly, all these writ petitions stand dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant