

KERALA HIGH COURT

P. Karunakaran

Vs

Chief Commercial Superintendent

W.A. No. 116 Of 1988

(V.S. Malimath, C.J. and Mr. Bhaskaran Nambiar, J.)

11.02.1988

JUDGMENT

V.S. Malimath, C.J.

1. This appeal is against the judgment of the learned single Judge dismissing O.P. No. 6195 of 1987. The appellant claims to be the Vice-President of the Vegetarian Refreshment Room Workers' Union, Railway Station, Kottayam. His case is that the 3rd respondent was running a vegetarian refreshment room at the Kottayam Railway Station from 1986 as a person who has been given the license to conduct such vegetarian refreshment room in Railway Station, Kottayam, subject to certain terms. The 3rd respondent-contractor who had acquired the right to run the vegetarian refreshment room at Kottayam Railway Station had, according to the appellant, employed about 30 workers. It is his case that all the 30 persons were employed as contract labourers to work in that refreshment room. It is stated that they were not employed by the Railways. They were employed by the contractor and were working under the contractor. The license under which the 3rd respondent was operating the aforesaid refreshment room expired on 31st July, 1987, and fresh tenders were invited by respondent Nos. 1 and 2 for giving a similar license to another suitable contractor. The appellant apprehending that the contract labour workers under the 3rd respondent would stand terminated on 31st July, 1987, thereby rendering them jobless, came to this Court under Article 226 of the Constitution of India for the issue of a writ in the nature of mandamus directing the Chief Commercial Superintendent, Southern Railway, Madras and the Senior Divisional Commercial Superintendent, Southern Railway, Trivandrum, respondents Nos. 1 and 2 in the appeal, not to grant any fresh vegetarian refreshment room license at Kottayam Railway Station so as to deny to the appellant and similarly placed employees their jobs. They also sought for a writ in the nature of mandamus directing the 1st, 2nd and 4th respondents, 4th respondent being the Union of India, to abolish contract labour in Southern Railway. The last prayer of the appellant is for a mandamus directing respondents Nos. 1, 2 and 4 to absorb the appellant and members of his Union into regular service of the Southern Railway regularising the if past service. What appears to have been pressed before the learned single Judge is the last prayer of the appellant, for the issue of a writ of mandamus to respondents Nos. 1, 2 and 4 to absorb the petitioner and members of the Union into the regular service of the Southern Railway and to regularise their past service.

2. The appellant built up his case entirely on the directions of the Supreme Court in the, decision reported in *Catering Cleaners of Southern Railway v. Union of India*¹). The learned single Judge felt that the directions issued by the Supreme Court in the aforesaid case do not govern the facts of the present case and that, therefore, the appellant is not entitled to claim the relief sought in the original petition on the strength of the said decision. Hence this appeal.

3. Before considering the question of applicability of the judgment of the Supreme Court, we shall briefly examine the legal rights of the parties in this behalf. The appellant and the members of his Union are members of the staff of the refreshment room run by the licensee, who is the 3rd respondent. They are admittedly not employees of the Southern Railway. They were all admittedly employed by the 3rd respondent who was a private contractor who earned a license for a particular period for running the Railway refreshment room in the Kottayam Railway Station. So there was never in existence relationship of master and servant between the Southern Railway and the appellant. So far as the right of the 3rd respondent to run the vegetarian refreshment room is concerned, that itself expired on 31st July 1987, and on further extension it stood expired finally on 31st August 1987. Thus, the right of the 3rd respondent to run the refreshment room came to an end on 31st August,-1987. Thus, there is absolutely no scope for the employees of a private contractor to claim right for absorption in the service of the Southern Railways, as such right neither flows from a contract nor from a statutory provision.

4. The Contract Labour (Regulation and Abolition) Act, 1970 is a Central Act to regulate employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. Section 10 of the said Act, on which reliance was placed by the appellant, deals with the provision of employment of contract labour, If the condition; prescribed in the said provision are satisfies the appropriate Government in consultation with the Central Board or, as the case may be, a State Board may prohibit by notification in the Official Gazette employment of contract labour in any process, operation or other work in any establishment. Shri Paikadey, learned Counsel for the appellant, when asked, made it clear to us that no notification relevant for the purpose of this case has been issued under Section 10 of the Act abolishing contract labour in such establishments. If that is the correct position, it follows that the contract labour in question has not stood abolished by issuance of appropriate notification under Section 10 of the Act. Even if the conditions under Section 10 are satisfied and a notification is issued abolishing the contract labour in the establishment of the type with which we are concerned in this case, the legal consequence that flows from issuance of such notification is the abolition of such contract labour. If the services under contract labour stand terminated as a consequence of the issuance of the notification under Section 10, persons who lose their jobs have not been given any statutory right for absorption in service of one or the other establishment. It, therefore, follows that even after a notification is issued under Section 10 in respect of this establishment, the legal consequence flowing from such issuance is the abolition of the contract labour. On such abolition, persons who get displaced do not get any statutory right for absorption in regular service under their employer. The Southern Railway is not even

¹1987-1-LLJ-345

their employer. Shri Paikadey, learned Counsel for the appellant, was not able to point out a single provision in the statute on the basis of which he can contend that such a right has been provided for, in favor of those who stand displaced on the issuance of the notification under Section 10. Besides, it has to be noticed that the period of the license of the third respondent

having come to an end on 31st August 1987, the contractor himself has to vacate the premises where the refreshment room was conducted and with him the entire establishment including the staff employed by him have to vacate, to pave the way for the new contractor to be which cleaners in catering establishments and pantry cars are at present employed in the Southern Railway. But, we refrain from doing so because under Section 10, Parliament has vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or other work in any establishment. The appropriate Government is required to consult the Central Board or the State Board, as the case may be, before arriving at its decision. The decision, of course, will be subject to judicial review. But we do not think that we will be justified in issuing the mandamus prayed for unless and until the Government fails or refuses to exercise the power vested in it under Section 10. In the circumstances, the appropriate order to make in the present case is to direct the Central Government to take appropriate action under Section 10 of the Contract Labour (Abolition and Regulation) Act in the matter of prohibiting the employment of contract labour in the work of cleaning catering establishments and pantry cars in the Southern Railway. This must be done within six months from today. Without waiting for the decision of the Central Government the administration of the Southern Railway will be free, of its own motion, to abolish the contract, labour system and to regularise the services of those employed in the work of cleaning catering establishments and pantry, cars in the Southern Railway. In any case, the administration of the Southern Railway will refrain, until the decision of the Central Government under Section 10, from employing contract labour. The work of cleaning catering establishments and pantry cars will be done departmentally by employing those workmen who were previously employed by the contractor on the same wages and conditions of work as are applicable to those engaged in similar work by the Western Railway. If there is any dispute whether an individual Workman was or was not employed by the co-inducted for the purpose of conducting the vegetarian refreshment room in the railway station. That being the clear position, we fail to see how on the basis of the case pleaded by the appellant, any right for absorption in the service of the Southern Railway can be claimed by the appellant. Such absorption will violate Articles 14 and 16 of the Constitution in the matter of employment of persons in the Railway administration. The appellant having thus failed to establish any right under any statute for absorption in the Railway Administration, submits that the' only foundation of their right is the directions of the Supreme Court in the decision reported in *Catering Cleaners of Southern Railway v. Union of India*(supra). We shall, therefore, examine the contentions of the appellant in this behalf.

5. Paragraph 10 of the judgment of the Supreme Court in *Catering Cleaners of Southern Railway v. Union of India*, (supra), at pages 353-354 relevant for the purpose of ascertaining the facts and the directions issued may be extracted thus:

"On the facts presented to us and on the report of the Parliamentary Committee of Petitions it appears to be clear that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of the Southern Railway and so requirement (a) of Section 10(2) is satisfied, that it is of a perennial nature and so requirement (b) is satisfied, that the work is done through regular workmen in most railways in the country and so requirement (c) is satisfied, and that the work requires the employment of sufficient number of whole time workmen and so requirement (d) is also satisfied. Thus all the relevant factors mentioned in Section 10(2) appear to be

satisfactorily accounted for. In addition we have the factor of profitability of the catering establishments. On these facts, the petitioners straightaway invite us to issue a mandamus directing the Central Government to abolish the contract labor system under tractor such dispute shall be decided by the Deputy Labor Commissioner, Madras. Any further directions may be sought, if necessary, from the Madras High Court. If the Central Government does not finally decide the question within six months from to-day, the Southern Railway Administration will, within three months thereafter absorb the workmen into their service and regularize their services."

It is clear from the above that in the case considered by the Supreme Court it was the Southern Railway that had employed workers on contract labor basis for doing the work of cleaning catering establishments and pantry cars of the Southern Railway. The workers were not employed by a private party as in the present case. The Supreme Court examined the question as to whether the facts justified action being taken to abolish such contract labor in the particular establishment by the Southern Railway. In this behalf, the Supreme Court, advertent to the report of the Parliamentary Committee of Petitions, felt that conditions specified in Section 10(2) of the Act for issuing a notification for abolishing contract labour appear to be satisfied. It is in this background that certain directions were issued by the Supreme Court calling upon the Central Government to take appropriate action under Section 10 of the Act, in the matter of prohibiting the employment of contract labour in the work of cleaning catering establishments or pantry cars in the Southern Railway. A time limit of six months was fixed for such a decision. But it was made clear that without waiting for such decision, the administration of Southern Railway is free on its own motion to abolish contract labour system and to regularise the services of those employed in cleaning the catering establishments and pantry cars in the Southern Railway. The Supreme Court further directed that pending decision under Section 10, the Southern Railway was restrained from employing contract labour irregard to cleaning catering establishments and pantry cars in the Southern Railway. It was further observed that that work may be done departmentally by employing those workers who were employed by the contractors by paying the same wages and conditions of work as are applicable to the workers employed by the contractor. There is a further direction to the effect that if the Central Government does not finally decide the question by issuing a notification under Section 10, then the Southern Railway Administration, within three months thereafter, absorb the workmen in their service and regularize their services. On a bare perusal of the directions issued by the Supreme Court, two things emerge very clearly. These directions pertain to the contract labour in the specified category of establishment of cleaning catering establishments and pantry cars in the Southern Railway and the contract labour for that establishment was engaged by the Southern Railway itself. Those directions can have no application to the present case, firstly, because we are concerned with a different type of establishment, namely, of catering in refreshment room and, secondly, for the reason that the contract labour was employed by a private contractor and not by the Southern Railway. : Besides, that work is not incidental to or necessary for the Railway administration. The appellant and the members of his union do not claim to be contract labourers employed in the work of cleaning catering establishments and pantry cars to which alone the Supreme Court decision applies. Therefore, they cannot derive any benefit from the benefit of the directions issued by the Supreme Court.

6. It was further contended by Sri Paikadey, learned Counsel for the appellant, that the directions issued by the Supreme Court contained in para 11 of the judgment must be understood as laying down the law of general applicability and is binding on this Court under Article 141 of the Constitution. If the directions contained in para 11 of the Supreme Court judgment are read carefully, it becomes clear that the directions were in regard to absorption of the contract labour employed to do the work of cleaning in catering establishments and pantry cars owned by the Southern Railway. The Supreme Court directed the Central Government to consider the question of issuing a notification under Section 10 of the Contract Labour (Abolition and Regulation) Act in respect of the particular type of employment in the Southern Railway. It was further directed that if a decision is not taken within the time specified, the Southern Railway administration is free to absorb the workmen in their service and regularise their service. The Supreme Court has not held that on the abolition of the contract labour system in respect of the particular type of establishment on the issuance of the notification under Section 10 of the Act those who get displaced by the issuance of such notification have a legal right for absorption of their services in the Railway administration. As already stated, Sri Paikadey, learned Counsel for the appellant, was not able to point out a single provision of law on the basis of which such a right can be claimed. As there is no such statutory right, it is obvious that the Supreme Court issued such a direction in regard to absorption and regularization of the services of the workmen having regard to the facts of that particular case and having felt that sympathetic considerations justified issuance of such directions. Shri Paikadey, learned Counsel for the appellant, made it very plain to us that what he asks for is rights and not for sympathetic considerations. So far as the actual directions are concerned, we have come to the conclusion that they are not applicable to the appellant. So far as the case considered by the Supreme Court is concerned, the Supreme Court was satisfied that all the conditions of Section 10(2) were fully satisfied and, therefore, the Supreme Court felt that there would not be any justification for not promptly issuing a notification under Section 10 of the Act. If, in such circumstances, the Central Government did not issue a notification even after the Supreme Court came to the conclusion that the conditions are satisfied, the Supreme Court felt that the appropriate course to be adopted, if an unreasonable attitude is taken by the Central Government, is to compel them to absorb the contract labourers. Those are not the facts in this case. The facts in this case are quite different. In this case the establishment concerned is different from the one considered by the Supreme Court. Here the workmen were engaged by a private contractor and opt by the Southern Railway. Unlike in the case decided by the Supreme Court, no facts are placed before us to show that conditions for issuing a notification under Section 10(2) are satisfied in this case. As none of the facts for taking a decision in this behalf have been placed before us in this case, we are not placed in the same position as the Supreme Court was placed when it rendered the decision in the case referred to above, pertaining to contract labour working in cleaning catering establishments and pantry cars of the Southern Railway. We have, therefore, no hesitation in taking the view that the appellant cannot claim any relief on the basis of the decision of the Supreme Court.

7. Before parting with the case we would like to remind ourselves that when dealing with cases of this type we should not confine our attention to the problems of only the petitioners who seek relief before this Court, particularly in the context of fundamental rights under Articles 14 and 16 of the Constitution of India in the matter of employment in public service. It is of vital importance in a country like ours where there is large scale unemployment that we should not ignore the possibility of infringing fundamental rights in the matter of equality of opportunity of young men who are entitled to seek equal opportunity in the matter of employment in public

service. Persons who thus get entry into the private employment under a contractor not wholly based on consideration of merit and not by giving equality of opportunity in the matter of employment if allowed to enter into regular service by their absorption in the Railways, it will entail infringement of equality of opportunity for young men in the country in the matter of seeking employment in the Railway administration. The rights of that unknown class should not be forgotten when we deal with cases of this type and what is pressed before us is only the equities of persons who are before us. Before issuing any directions we would like to remind ourselves about the existence of that class of unemployed who are waiting for equal opportunity in the matter of employment so that their rights are not curtailed by such back-door entry into public service.

8. For the reasons stated above, this appeal fails and is dismissed.
Appeal dismissed.