CASE NO.:
Appeal (civil) 3166 of 2002
Appeal (civil) 3200 of 2002
Appeal (civil) 3167 of 2002

PETITIONER:
Ram Singh and others

RESPONDENT:
Union Territory, Chandigarh & Ors

DATE OF JUDGMENT: 07/11/2003

BENCH:
Shivaraj V. Patil & D.M. Dharmadhikari

JUDGMENT:

J U D G M E N T
Dharmadhikari J.

The Department of Engineering, Chandigarh Administration, is maintaining electricity supply to the Government Medical College and Hospital, Chandigarh. It has established a sub-station for that purpose.

All the appellants in this batch of appeals are trained electricians and skilled workmen. They have been employed through different Contractors for various jobs connected with the sub-station set up to maintain electricity supply.

The employees working at the sub-station in the Medical College and Hospital premises approached the Central Administrative Tribunal, Chandigarh with a prayer that the work of the employees for maintaining supply of electricity in the College and Hospital premises being of a perennial nature, the Engineering Department of Chandigarh Administration be directed to regularise their services in the Administration. By its detailed judgment passed on 13.8.1988 the Tribunal rejected the petitions filed by the employees on merits as also on the ground that the employees engaged through contractor cannot be held to be holders of 'civil post' as defined under Section 3(q) of the Administrative Tribunals Act hence the Tribunal has no jurisdiction to grant any relief.

The employees then filed separate Writ Petitions under Article 227 of the Constitution in the High Court of Punjab and Haryana which have been dismissed by the impugned common judgment passed on 3.8.2000.

The contention advanced by the contract employees before the High Court was that although they were employed on various jobs by the Contractor for maintaining supply of electricity to the College and Hospital the Engineering Department of the Chandigarh Administration exercises complete control over their work. According to them the real employer is the Engineering Department of the Chandigarh Administration and the Contractor has been introduced only to pay them salary or wages. It was argued that in order to deny the employees benefits of regular employment under Chandigarh Administration, the agency of Contractor has been resorted to. The employees sought annulment of the order of the Tribunal and in the alternative sought issuance of directions for consideration of their cases for regularisation of their services under the Chandigarh Administration. They also sought directions to prohibit by issuance of a notification under the provisions of the Contract Labour (Regulation and Abolition) Act 1970, engagement of

labour through contractor for maintaining electricity supply to the government hospitals and other college premises.

In this batch of appeals, learned counsel appearing for the employees have drawn our attention to certain conditions of the contracts which have been awarded to various Contractors for maintaining supply of electricity. Reading those contentions of the contract, it is argued that they clearly indicate that Engineering Department of Chandigarh Administration has retained complete control on the employment, work and continuance of service of the contract labour. It is further argued that maintenance of supply of electricity to hospital and college premises being a work of permanent and perennial nature, employment of the staff for it through contractor is an unfair labour practice.

The respondent Chandigarh Administration has not disputed the fact that the maintenance of electricity supply to the Hospital and College building is under the Engineering Department of Chandigarh Administration. Its case is that the Engineering Department of Chandigarh Administration does not have adequate maintenance staff to execute the job, hence the work has been awarded to Contractors through the process of tender. With regard to the certain terms of the contract it is explained that to ensure efficiency and quality of work, which is of a technical nature to be carried under technical guidance and as the Contractors' availability at the site for all twenty four hours is not possible, work of supervision is kept with the regular staff of the Engineering Department attached to the College and Hospital. In the event of emergency, the employees have to seek guidance from the available staff at the Hospital. This is said to be the reason for incorporating conditions in the contract that the contract employees would be directly under the control of the Department. It is submitted that such control is only for the purpose of ensuring efficiency and quality of work.

Similarly, it is explained that the contract labour has been employed for technical work. Insistence has been made in the condition of contract for engaging qualified electricians and helpers to avoid any danger and hazard in the maintenance of electricity. The condition that the staff provided by the contractor would not be changed without approval of the Department is for the sake of convenience since the staff already engaged by the Contractor would become familiar with the electrical system of the Hospital and frequent change in the staff might impair normal work. Thus explaining the various conditions of the contract it is submitted that the employees have been engaged through the Contractor for maintenance of electricity from the sub-station. This, it is said, is a temporary arrangement till the Administration creates requisite number of posts and decides to recruit employees under the Department on deputation or by direct recruitment.

We have examined the contentions advanced by the employees before the Tribunal and in the High Court. Before the Tribunal and the High Court, the appellants did not dispute the fact that they are employees of the Contractor. They sought relief of regularisation of their services under the Engineering Department of Chandigarh Administration on the ground that the work of maintaining supply of electricity for which they have been employed being of a permanent and perennial nature, they should be directed to be directly employed by the Administration.

In these appeals before us there appears to be a shift from the stand taken by the employees before the Tribunal and in the High Court. What is now being urged is that the electricity supply is to be maintained by the Engineering Department of the Administration and instead of directly employing the appellants, the Administration has

resorted to the mode of appointment through Contractor. Relying on the terms and conditions of the contract it is submitted that entire control exercised on the employees is of the Engineering Department. They are, in fact, employed by the Engineering Department though under the garb of contractual appointment which is fake and a camouflage. It is argued that this Court can lift the veil of make-believe relationship and hold that the appellants are in fact the employees of the Engineering Department of the Administration. Strong reliance is placed on [1978 (4) SCC 257] Hussainbhai, Calicut vs. The Alath Factory Thezhilali Union Kozhikode; [1999 (3) SCC 601] Secretary, HSEB vs. Suresh; [2003 (6) SCC 528 BHEL vs. State of UP.

Learned counsel appearing for the respondent on the side of the Administration submitted that in the Constitution Bench decision of this Court in the case of Steel Authority of India Ltd. vs. National Union Waterfront Workers [2001 (7) SCC 1], after considering all previous decisions, this Court has explained the nature of right of contract employees in various contingencies such as where there exists a notification issued under Section 10(1) of CLRA Act prohibiting employment of contract labour in particular establishment and where there is no such prohibition. The Constitution Bench has also explained the legal position of the contract labour where it is employed through the agency of contractor although in reality such employment is directly under the principal employer and for the employer's work or processes in the establishment.

Reference has also been made by counsel for the parties to the decision of this Court in Municipal Corporation of Greater Mumbai vs. KV Shramik Sangh [2002 (4) SCC 609] in which the Constitution Bench decision in Steel Authority of India (supra) has been relied to direct the employees to seek remedy by availing forum of industrial adjudication under the Industrial Disputes Act. It is held that it is only in industrial adjudication that facts and circumstances can be investigated to ascertain the nature of employment.

On behalf of the Delhi Administration, it is stated that its Engineering Department is registered under Section 7 of the CLRA Act. It is not disputed by the parties that no notification under section 10(1) of the CLRA Act has been issued prohibiting employment of contract labour in the Engineering Department of Chandigarh Administration.

We have considered the arguments advanced on behalf of the employees based on the terms of the contract.

In determining the relationship of employer and employee, no doubt 'control' is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole 'test of control'. An integrated approach is needed. 'Integration' test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are - who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the 'mutual obligations' between them (see Industrial Law \026Third edition by I.T. Smith and JC Wood \026 at pages 8 to 10).

Normally, the relationship of employer and employee does not exist between an employer and Contractor and servant of an

independent Contractor. Where, however, an employer retains or assumes control over the means and method by which the work of a Contractor is to be done it may be said that the relationship between employer and the employee exists between him and the servants of such a Contractor. In such a situation the mere fact of formal employment by an independent Contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent Contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Where a particular relationship between employer and employee is genuine or a camouflage through the mode of Contractor is essentially a question of fact to be determined on the basis of features of relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact, it has to be raised and proved before an industrial adjudicator. Conclusion Nos. 5 & 6 of the Constitution Bench decision of this Court in Steel Authority of India (supra) are decisive for purposes of this case which read as under:

"(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 regularise 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 hereunder.

(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 wherein 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."

In case of Steel Authority of India (supra) after recording the above conclusions, the Constitution Bench added :-

"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."

Relying on the Constitution Bench decision of this Court, in the case of Municipal Corporation of Greater Mumbai vs. KV Shramik Sangh [2002 (4) SCC 609] the employer who had lost the case in the writ petition before the High Court was directed to approach the appropriate court for industrial adjudication.

The rulings of this Court which have been relied but which are earlier to the decision of the Constitution Bench in case of Steel Authority of India (supra) can be of little assistance to support the contentions on behalf of the appellants. The other decision strongly relied in the case of BHEL (supra) [2003 (6) SCC 528] is distinguishable. The decision in favour of the workmen was rendered in that case after an industrial adjudication had ended in their favour.

In view of clear and binding pronouncement of law by the Constitution Bench of this Court in the case of Steel Authority of India (supra), in the present appeals which arise from writ petitions preferred against the adverse judgment of the Central Administrative Tribunal (CAT), none of the reliefs, as prayed for, can be granted to the employees. Without ascertaining through the industrial forum, factual aspects of inter se relationship between the Chandigarh Administration, the Contractor and the contract employees, no relief can be granted.

For the aforesaid reasons, these appeals are dismissed but without prejudice to the rights of the employees to resort to the remedy of industrial adjudication in accordance with law as explained above.

In the circumstances, we make no order as to costs in these appeals.