



Circular No – 033 / 2023

Date: 10.02.2023

To
All Members of The Association

KARNATAKA HIGH COURT LATEST JUDGMENT

**SHAM CONTRACT – CONTRACT LABOURERS TO BE
TREATED AS EMPLOYEES OF PRINCIPAL EMPLOYER**

1. The Hon'ble High Court of Karnataka Bengaluru in its order dated 23.02.2023 in Writ Petition No. 3788 of 2012 (L-RES) between Mysore Electricals Industries Ltd (Government of Karnataka undertaking) and Engineering and General Workers Union has ordered for treating the employees of the contractor as the employees of the principal employer. Further directed that the principal employer shall regularize their services subject to availability of the vacancies and in the event, there being no vacancy as and when vacancies arise. The principal employer shall give preference to the contract labourers, if they are found suitable by relaxing the condition as to the maximum age, as also academic qualification.
2. The facts leading to the above decision are that M/s Mysore Electricals Industries Ltd had engaged contract labourers for housekeeping, gardening, loading, unloading, having regard to the fact that these jobs were required to be done only for few hours in a day. The

company had entrusted the above work to the contract labourers on lump sum payment by entering into a contract with the contractors.

3. The company terminated the contract with contractors. The contractors withdrew their employees. The dispute raised by the union of the contract labourers in this behalf was referred to for adjudication with the following terms by the Government of Karnataka to the Industrial Tribunal Bengaluru on 14.12.1999.

“i. Whether the management of Mysore Electrical Industries Ltd, Tumkur Road, Bengaluru, are justified in engaging contract workers as packers, electricians, Welding, Cook, Stores, Painters, House-Keeping, Driver, Typist, Draftsman, Librarian Etc. and getting done permanent and perennial nature of work through them and whether the said contract system in sham?

ii. If not, to what relief the workers shown in Annexure “A” who are represented by Engineering and General Workers Union, NO.2, Mill Corner, Malleswaram, Bengaluru -3 are entitled?”

4. The Industrial Tribunal in its Award dated 03.12.2011 directed that the employer to restore the services of the workmen. In other words, the contract labourers may continue to work with the contractor. Aggrieved by the said order, the company challenged the Award by filing writ petition before the Hon’ble High Court of Karnataka.

5. The Hon'ble High Court by its order dated 23.02.2023 has held as under:

- There was no registration by the establishment and contractor had not obtained license in accordance with the provisions of the CLRA Act.
- There was no agreement between the employer and the contractor.
- The entire arrangement is sham. On the said basis, the Hon'ble High Court held that the decision of the Industrial Tribunal holding that notification under Section 10(1) of CLRA Act (Prohibition of Engagement of Contract Labour) is not a pre-requisite for the industrial Tribunal to have jurisdiction to decide the matters relating to restatement or regularization of services of contract labour.
- The contract labourers being in employment from year 1995 onwards, it cannot be said that they lack qualification. Contract labourers being in employment from the year 1995 also indicates that there are vacancies. If that be so, the workmen need to be adequately provided for and absorbed until such observation would continue to render service as contract labourer directly under employer with the employer making payment of equal pay or equal work.

6. The most important point considered by the Hon'ble High Court is whether the works of housekeeping, painter, driver, typist, welder, cook, electrician, packer, loader, unloader can be said to be perennial work and not temporary work. The Hon'ble High Court after analysing the nature of work performed by the contract labourers concluded that the job profiles being ones whose services are required on a day-to-day basis, also for months on end, Court held that these jobs are perennial in nature and therefore would not be temporary.
7. The Hon'ble High Court has also recorded that there is no agreement between the principal employer and the contractor, registration by the principal employer and the contractor has not obtained registration and the whole arrangement is sham, the question whether the post in which the contract labourers are engaged is perennial or temporary is only an academic question. Further the above observations were made by the High Court with respect to the contention of the principal employer that the job for which the contract labourers were engaged is temporary.
8. The Hon'ble Supreme Court in the case of **Haryana State Electricity Board Vs. Suresh 1999 AIR SC 1160** has already held that if the contract system is sham and not genuine besides there was no compliance from principal employer for registration and contractor has not obtained license, the direct employer and employee relationship will come into existence between the principal employer and the





contract labourers. Haryana Electricity Board had engaged contract labourers for upkeep of the plant and Electric Station clean and hygienic.

9. The decision in the case of Haryana Electricity Board has been upheld in the case of **Steel Authority of India Vs. National Union Water Front Workers and Others AIR SC 3527.**
10. The judgment in the case of Mysore Electricals should be read having regard to the facts of the case and the contentions raised by the parties before the High Court. The judgment cannot be read to mean that the establishments cannot engage contract labourer for housekeeping, gardening, loading and unloading etc. The member establishment while engaging contract labour through the contractor should ensure that there is a proper agreement between the contractor and the company, company should obtain registration under CLRA Act, and contractor should obtain license under the Act. The principal employer should ensure that the contractor fully complies with the provisions of the CLRA Act and other applicable labour laws.

For, KARNATAKA EMPLOYERS' ASSOCIATION

**Sd/
[B C Prabhakar]
President**