

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.12376/2019

(Arising out of impugned final judgment and order dated 14-11-2018 in D. B. Spl. Appl. Writ No.1621/2018 passed by the High Court of Judicature for Rajasthan at Jodhpur)

THE STATE OF RAJASTHAN &amp; ANR.

Petitioner(s)

VERSUS

MAHESH

Respondent(s)

WITH

SLP(C) No. 21399/2019 (XV)

SLP(C) No. 23456/2019 (XV)

Diary No. 5506/2020 (XV)  
(IA No. 34840/2020 - CONDONATION OF DELAY IN FILING)

SLP(C) No. 9289/2020 (XV)

SLP(C) No. 9290/2020 (XV)

Date : 22-03-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. Vidhan Vyas, Adv.  
Ms. Pragati Neekhara, AOR

Dr. Manish Singhvi, Sr. Adv.  
Mr. Arpit Parkash, Adv.  
Mr. Milind Kumar, AOR

For Respondent(s) Ms. Charu Mathur, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned

On perusal of pleadings including the grounds raised in the special leave petition(s), we cannot find anything to support the issue sought to be now raised before us by the learned counsel for the petitioner-State. The conspectus of the issue sought to be raised before us is that the amendment to the Act of 1958 of the State Legislature which received the President's assent stands eclipsed after the enactment of the Contract Labour (Regulation & Abolition) Act, 1970.

In terms of the amendment made, the definition of Section 2(s) of the Industrial Disputes Act, 1947 (the "ID Act") substituted the words "employed in any industry" with the words "by an employer or by a contractor in relation to the execution of his contracts with such employer". The endeavor appeared to be to amend the definition to include even the employees who were employed through contractors under the category of 'Workman' within the purview of the ID Act.

It is the say of the learned counsel for the petitioners that under Article 254(2) of the Constitution of India the Presidential assent has to be with regard to the law 'already enacted' by the Parliament or the 'existing law'. He thus submits that it does not contemplate that if a Presidential assent has been taken, it shall override all other laws which would be enacted in future by the Parliament, since Parliament in its wisdom has enacted the Contract Labour (Regulation & Abolition) Act, 1970 (Contract Labour Act)

which specifically contemplates the engagement of contract labour. Thus, the issue sought to be raised was whether the contract labourers can be directed by the Labour Court to be absorbed/regularized in the main cadre in the absence of sanctioned posts/ in absence of finding of unfair labour practice.

The aforesaid aspect has neither been raised before the Industrial Tribunal nor before the High Court and for that matter not even before this Court. No doubt this is an aspect which deserves to be examined and we are informed that many cases are being dealt with in the absence of this consideration but then it is for the petitioners to raise this issue before the competent forum and then this Court would have the benefit of consideration of the relevant judgment dealing with this aspect. It would not be appropriate to examine this issue as the first Court itself, more so as it deals with the aspect of State enactment and interplay with a central enactment.

In the given facts of the case, the special leave petitions are dismissed leaving the question of law open and we hope the state would be vigilant of such issue in future.

(RASHMI DHYANI)  
COURT MASTER

(POONAM VAID)  
COURT MASTER