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CALCUTTA HIGH COURT ON REGULARIZATION

A. Introduction

The High Court of Calcutta (“**HC**”), in the *Raju Mishra* case,¹ held that if the notification issued under the Contract Labour (Regulation and Abolition) Act, 1970 (“**Act**”) is valid, then it does not mean that the contract labour would automatically get a vested right to be absorbed as regular employees of an establishment.

B. Brief Facts

1. Raju Mishra (“**Mishra**”) had approached the Single Bench of HC seeking a direction to Kolkata Port Trust (“**KPT**”), to appoint him on a regular basis for maintenance, laying, linking, and changing railway tracks within the port area.
2. Mishra claimed that:
 - a. He had been employed by KPT for several years to perform track maintenance work.
 - b. The work he performed is perennial in nature.
 - c. He is entitled to regular absorption due to a prohibition notification issued under section 10(1) of the Act which prohibits the employment of contract labour for certain tasks.
3. The HC dismissed the writ petition, relying on the Supreme Court’s decision in the *Steel Authority* case of 2013 (“**SC Case**”).²
4. Aggrieved by this, Mishra filed this intra-court appeal.

C. Mishra’ Contentions

He referred to paragraph 125 of the SC Case, and contended as follows:

1. “...[O]n issuance of prohibition notification under section 10(1) of the said 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.”³
2. “If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employee 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. Sub-para 6 of paragraph 125 was also referred to support the argument that if the notification issued under section 10(1) of the Act prohibiting employment of contract labour has been held to be valid, then the contract labour would be entitled for being given preference by the employer.”⁴

D. HC’s Judgment & Reasoning

The Division Bench dismissed the appeal, upholding the Single Bench’s decision and held that:

¹*Raju Mishra & Ors v. Union of India & Ors.* 2023 LLR 485 (Cal. HC).

² *Steel Authority of India Ltd. and Ors. vs. National Union Water Front Workers and Ors.* (30.08.2001 - SC): MANU/SC/0515/2001

³ Para 4 of the judgment.

⁴ *Ibid.*

- a. The issues raised by Mishra regarding the genuineness of the contract and the effect of the prohibition notification are not relevant to the present appeal, as he sought the remedy of mandamus⁵ for regularisation.
- b. A writ of mandamus cannot be issued to direct the regularisation of an employee.
- c. Merely because the prohibition notification is valid, it does not automatically entitle the contract labour to be absorbed as a regular employees.

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⁵A writ of mandamus or writ of command is a direction issued by a competent court to a person or body to perform a legal duty that it has failed to perform.