

IN THE HIGH COURT OF JHARKHAND AT RANCHI
WP(S) No.5216 of 2021

Jharkhand Krantikari Mazdoor Union, a Union Registered under the provisions of Trade Union Act 1926 having its Kolhan Commissionery Office at Karandih, P.O. & P.S. Karandih, Jamshedpur, District East Singhbhum, through its Unit President Dilip Soren Son of Late Mangal Soren, Resident of Village Heselbil, P.O.& P.S. Potka, District- East Singhbhum.

... Petitioner(s).

Versus

1. The State of Jharkhand, through its Secretary, the Department of Labour & Industry Project Building, P.O. & P.S- Dhurwa, District- Ranchi.
2. The Chairman & Managing Director- Tata Iron & Steel Company Ltd., Jamshedpur, PO Jamshedpur, PS Jamshedpur, District East Singhbhum
3. The Executive Director- Tata Iron & Steel Company Ltd. Jamshedpur, P.O.-Jamshedpur, P.S.-Jamshedpur, District- East Singhbhum.
4. The General Manager (Works) Tata Iron & Steel Company Ltd, Jamshedpur, P.O.-Jamshedpur, P.S. Jamshedpur, District- East Singhbhum.

... Respondent(s).

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Rama Kant Tiwari, Advocate
For the State : Mr. Munna Lal Yadav, SC (L&C)-III
Mr. Deepak Kr., AC to SC (L&C)-III
For the resp. No. 2-4 : Mr. Manish Mishra, Advocate

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07 /19.01.2026: Heard the parties.

2. By filing this writ petition, the petitioner which is a registered Labour Union has prayed to regularise the services of the listed contract workers who were found eligible to be regularised by the Industrial Tribunal based on the Award rendered on the basis of substituted reference by the Hon'ble Supreme Court while disposing the Appeal filed by the Jamshedpur Contractor's Worker's Union wayback on 24.08.1990.
3. The petitioner claims that some of their Union Members needs to be regularised which has not been done.
4. The Award has not been brought on record. Further no

order for regularisation can be passed by the High Court invoking jurisdiction under Article 226 of the Constitution of India. This proposition of law has already been set at rest by the Hon'ble Supreme Court in the case of **"Steel Authority of India and Others vs. National Union Waterfront Workers and Others"** reported in **(2001) 7 SCC 1**. In paragraph 125 of the aforesaid judgment which deals with regularisation of the contract labour (as in this case). While overruling the judgment of the Hon'ble Supreme Court delivered in **"Air India Statutory Corporation vs. United Labour Union"** reported in (1997) 9 SCC 377, it has been held by the Hon'ble Supreme Court that it is only the industrial adjudicator who has to consider regularisation considering the evidence on record for regularising. So far as regularisation of the contract worker is concerned, paragraph 125 of the aforesaid judgment in details has dealt with as to why the matter should go before Industrial Tribunal. In paragraph 126 the Hon'ble Supreme Court used the word "industrial adjudicator", by design as determination of such question requires enquiry into disputed question of fact and the same cannot be looked into by the Hon'ble High Court exercising jurisdiction under Article 226 of the Constitution of India. It is necessary to quote paragraph 125 and 126 of the aforesaid judgment"

"125.*The upshot of the above discussion is outlined thus:*

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central

Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

- (1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and
- (2) having regard to
 - (i) conditions of work and benefits provided for the contract labour in the establishment in question, and
 - (ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in *Air India case* [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in *Air India case* [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(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 6 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 where in 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.

126. 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.”

- 5.** In view of the aforesaid judgment, this Court cannot direct for regularisation of any of the members of the petitioner. The petitioner if so advised, may approach the Industrial Tribunal.
- 6.** This writ petition is **dismissed** with the aforesaid liberty.
- 7.** Pending I.A.s stands dismissed.

(ANANDA SEN, J.)

19.01.2026
Tanuj/CP-2

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