

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT APPEAL Nos.710, 711, 712, 714 and 717 of 2016

12.08.2016

Between:

Ch.Glady and others

..Appellants

And

The Central Government Industrial Tribunal-cum-
Labour Court, Hyderabad and others

..Respondents

Counsel for the appellants: Mr.Vanam Vishwanatham

Counsel for respondent No.1: --

Counsel for respondent Nos.2 and 3: Mrs.Ch.Lakshmi Kumari,
standing counsel for Food Corporation of India (F.C.I.)

The Court made the following:



COMMON JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

1. The facts leading to the filing of these writ appeals are briefly stated as under:

The appellants claimed that they worked as unskilled labourers directly under the Food Corporation of India (F.C.I.) in their Modern Rice Mill (M.R.M.), Sattenapally, between 1977 and 1981. Thereafter, they were brought under the control of the contractors and worked under them till the end of 1989 and that the F.C.I. issued Circular No.EP.I(4)/85 Vol.II, dated 06.05.1987, wherein it was, *inter alia*, decided to relax the ban on recruitment for filling up of the entry level category III and IV posts by considering full time casual/daily rated employees, who have been performing duties of regular employees of the F.C.I. under the F.C.I. (Staff) Regulations, 1971, and who have completed three months periods of service as on 02.05.1986 and possessed the requisite qualifications etc. It was further laid down that the casual employees, who do not fulfill the conditions of appointment for any entry level category III and IV posts, shall be retrenched by paying retrenchment compensation as required under the provisions of the Industrial Disputes Act, 1947 (for short 'the Act'). The Zonal Manager of F.C.I., Madras, issued telex message, dated 17.08.1989, calling for the particulars of casual/daily rated employees for regularisation. On 01.01.1990, the Unit Manager, F.C.I., M.R.M., Sattenapally, transmitted the full particulars of the workmen along with the records pertaining to 17 persons, including the appellants. As the services of 21 workmen, including the appellants, were not regularised, they were constrained to file W.P.No.17306 of 1989. By common order, dated 05.10.1994, a learned Single Judge of this Court partly allowed the said writ petition and two other writ petitions *viz*,

W.P.Nos.18193 and 18194 of 1989. Similar order was also passed by the learned Single Judge in W.P.No.17290 of 1989 on 08.11.1994. These orders were questioned in W.A.Nos.276, 277, 492 and 281 of 1995 respectively by the F.C.I. A Division Bench of this Court allowed these writ appeals, by common order, dated 30.10.1996 [1997(1) ALT 594]. The Division Bench set aside the orders of the learned Single Judge holding that since disputed questions of fact and law were involved, the learned Single Judge ought to have permitted the parties to agitate the same before the Labour Court by adducing necessary oral and documentary evidence in support of their contentions and instead, the learned Single Judge straight away issued directions to appoint the workmen before him (including the appellants), who were found to have worked either directly under the authorities of the F.C.I. or under the contractors employed by the authorities at least for a period of five years, on regular basis. The Division Bench further held that in view of the settled legal position, such a direction could not have been issued and that unless the disputed question of fact of existence of master and servant relationship between the F.C.I. and the workmen is established, issuance of a direction to regularise their services does not arise. On the aforementioned reasoning, the Division Bench issued the following directions:

“31.....Therefore, we feel it proper if both the parties are directed to straightaway approach the Labour Court to file their representations. Sri Anjaneyulu, learned counsel appearing for the appellants submits that the Corporation will have no objection if the workmen raise an industrial dispute directly before the Labour Court instead of approaching the Government to refer the same. In view of such circumstances, we direct the petitioners workmen to make their claim/representation before the Industrial Tribunal-cum-Labour Court, as to their claim furnishing a copy of

the same to the Management of the Corporation. The Corporation, within fifteen days from the date of receipt of such representation/claim petition, file its counter taking all the objections. Both the parties are at liberty to file all the material documents which they want to rely upon and shall also furnish the list of witnesses they want to be examined in their favour. The Labour Court shall conduct enquiry in accordance with law and after giving opportunity to both the parties, keeping in mind the Principles laid down in the cases cited supra on the relevant issues and then pass appropriate orders as to the existence or otherwise of relationship of 'Master' and 'Servant' between the Corporation and the Workmen-petitioners and pass award accordingly. In case, the Labour Court comes to the view that the workmen have established their case of existence of 'Master' and 'Servant' relationship between them and the Corporation, then, it shall also give a finding whether they are entitled for regularisation of their services with all consequential benefits. Both the parties shall cooperate with the Labour Court to get the matter disposed of as expeditiously as possible. In any case, the Labour Court shall dispose of the matter by the end of June, 1997."

Following the Division Bench judgment, the appellants and other similarly situated claimants approached the Labour Court, Guntur, which entertained the same and commenced the proceedings. In the midst of these proceedings, the Central Government constituted the Central Government Industrial Tribunal (C.G.I.T.)-cum-Labour Court at Hyderabad, as a consequence of which, the matters were transferred to the C.G.I.T. and were re-numbered as L.C.I.D.No.115 of 2002 and batch. The C.G.I.T. allowed the parties to adduce evidence in their individual I.Ds. On behalf of the workmen, each of them examined himself as D.W.1 and on behalf of the F.C.I., one V.Bhavani Prasad, was examined as M.W.1, in all these cases. Separate documentary evidence was adduced on behalf of the workmen in each I.D. However, the F.C.I. got Exs.M-1 to M-10 marked in common to all the I.Ds. The C.G.I.T. kept in

mind the directions issued by the Division Bench and accordingly, proceeded to decide two issues *v/z*, whether there was master and servant relationship between the F.C.I. and the workmen and whether all or any of the claimants were entitled to regularisation.

2. A perusal of the common award, dated 28.02.2003, of the C.G.I.T. shows that it discussed in detail the claims of each of the workmen with reference to the evidence adduced by him and by the F.C.I. separately and found that only in respect of three (3) out of the fourteen (14) workmen, there was master and servant relationship. The C.G.I.T. further found that the claimant in L.C.I.D.No.120 of 2002 i.e., T.Sambaiah, worked for 5 years as casual labour, the claimant in L.C.I.D.No.118 of 2002 – M.Venkateswarlu, worked for a period of 16 months as casual labour and T.Ramakrishna Murthy - the claimant in L.C.I.D.No.116 of 2002 and the appellant in W.A.No.711 of 2016 herein, worked for the period from 01.11.1977 to 05.05.1978 i.e., only for 6 months and few days in the F.C.I. While granting certain relief to T.Sambaiah and M.Venkateswarlu, the C.G.I.T. declined to grant the same to T.Ramakrishna Murthy – the appellant in W.A.No.711 of 2016 on the ground that he did not work for a minimum period of 240 days and therefore, he was not entitled to the benefit of regularisation and other benefits. The claims of all other workmen also were rejected by the C.G.I.T. by rendering a finding that barring the aforementioned three persons, none of these other workmen was able to establish master and servant relationship. The C.G.I.T. also found that though the claimants claimed that their services were dispensed with in the year 1981, for the first time, they approached the Court claiming regularisation in the year 1989 and that in the absence of any documentary evidence showing that

they worked directly under the F.C.I. for a minimum period of 240 days, they could not establish master and servant relationship and consequently, they were not entitled for regularisation.

3. Mr.Vanam Vishwanatham, learned counsel for the appellants, has submitted that in case of T.Ramakrishna Murthy – the appellant in W.A.No.711 of 2016, the C.G.I.T. committed a serious error in not considering Ex.W-7 – proceedings No.IR.32/1/90-Vol.II, dated 28.09.1995, issued by the District Manager, F.C.I., Guntur, and that therefore, the award of the C.G.I.T. suffers from error apparent on record. He has also submitted that the learned Single Judge has not considered this aspect and dismissed the writ petition filed by the said person. As regards the other workmen, the learned counsel, while fairly admitting that for being regularised, not only that a workman shall establish master and servant relationship but also that he should prove that he worked for a minimum period of 240 days in an year, he has, however, argued that though no direct evidence could be produced by the other workmen, the C.G.I.T. has not considered I.A.No.123 of 1997 filed by the workmen to call for records from the F.C.I., M.R.M., Sattenapally to establish the claim of the workmen that they worked for a minimum of 240 days.

4. As regards W.A.No.711 of 2016, we find merit in the submissions of the learned counsel for the appellants. In the said writ appeal, the appellant produced Exs.W-1 to W-7. Ex.W-1 is the service certificate issued by the Unit Manager to the effect that the appellant in W.A.No.711 of 2016 worked for the period from 01.11.1977 to 05.05.1978. However, the District Manager, who is superior to the Unit Manager, issued proceedings, *vide* Ex.W-7, wherein, while referring to the certificate issued

by the Unit Manager i.e., Ex.W-1, he categorically stated that the records that were transmitted to him by the Unit Manager, F.C.I., M.R.M., *vide* his letter, dated 01.01.1990, show that the appellant in W.A.No.711 of 2016 worked as casual labour for 288 ½ days in 1978 and 182 ½ days in 1979, with breaks. However, he has stated that the appellant in W.A.No.711 of 2016 has not worked for a period of 5 years or more continuously with the F.C.I. The admitted criterion that was applied by the C.G.I.T. was whether there was master and servant relationship and if so, whether the workmen worked for a minimum period of 240 days in an year. The C.G.I.T., however, has not considered Ex.W-7, which as noted above categorically found that the appellant in W.A.No.711 of 2016 worked for more than 240 days in 1978 and 182 ½ days in 1979. Had the C.G.I.T. considered this document, this appellant also would have been granted the same relief as was granted to the other two claimants – M.Venkateswarlu and T.Sambaiah. In our opinion, the C.G.I.T. committed a patent error in not considering Ex.W-7 and thereby, denying the relief to the appellant in W.A.No.711 of 2016. The learned Single Judge also failed to advert to this aspect and erroneously dismissed the writ petition filed by this appellant. In the light of the above discussion, we are of the opinion that the appellant in W.A.No.711 of 2016 is entitled to the same relief as was granted by the C.G.I.T. in respect of Mr.M.Venkateswarlu and T.Sambaiah.

5. As regards the appellants in W.A.Nos.710, 712, 714 and 717 of 2016, the bone of contention of the learned counsel for the appellants is that had the C.G.I.T. called for the records as sought for in I.A.No.123 of 1997, these appellants would have established the relationship of master and servant and also the fact that they worked for a minimum period of

240 days in an year. From the award of the C.G.I.T., we find that a reference was made to I.A.No.123 of 1997 and also its contents. However, it did not deal with the above aspect. Having regard to the long lapse of time, we find it not appropriate to remand the cases. Instead we have perused the record carefully, in order to give quietus to the litigation. The management of the F.C.I. filed counter-affidavit in I.A.No.123 of 1997. In the penultimate para of the counter-affidavit, it was averred as under:

“It is further submitted that the alleged lr.dt.1.1.1990 and also the alleged files referred therein are not at all traced in the Office in spite of thorough search and best efforts made. So, there is every possibility that the records and the alleged letter dt.1.1.1990 must have been destroyed in the usual course.”

The workmen did not join issue with the aforementioned averments in the counter-affidavit. If the appellants in W.A.Nos.710, 712, 714 and 717 of 2016 worked directly under the F.C.I., we do not find any reason why they could not obtain certificates similar to those obtained by M.Venkateswarlu, T.Sambaiah and T.Ramakrishna Murthy – the appellant in W.A.No.711 of 2016. Having regard to the stand taken by the management that the records are missing and in the absence of any evidence produced by the workmen establishing the master and servant relationship, we are of the opinion that these appellants failed to establish their case unlike the three other workmen referred to above and that both the C.G.I.T. and the learned Single Judge have rightly denied the relief to them.

6. For the aforementioned reasons, W.A.No.711 of 2016 is allowed, by declaring that the appellant therein is entitled to the same relief as was

extended to Mr.M.Venkateswarlu and T.Sambaiah, and W.A.Nos.710, 712, 714 and 717 of 2016 are dismissed.

7. As a sequel to disposal of these writ appeals, miscellaneous petitions pending therein shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

12th August, 2016
GHN

