

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

W.P.Nos.16333, 16337, 16793, 16796, 16806, 16809, 16812, 16817,
16823, 16824, 16838 and 16339 of 2003

&

W.P.Nos.21224, 21227, 21228, 21229, 21230, 21233, 21234, 21236,
21301, 21240 and 21241 of 2003

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Date:17.03.2016

Between:

The Senior Regional Manger and
another.

... Petitioners.

AND

The Central Government Industrial
Tribunal-cum-Labour Court,
Hyderabad rep by its
Presiding Officer and another.

...Respondents.

The Court made the following :

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COMMON ORDER:

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These batch of writ petitions are filed assailing common order dated 28-02-2003 of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad. Individual Industrial Disputes are raised before the Central Government Industrial Tribunal, Hyderabad and

they were all disposed of by a common order dated 28-02-2003. Individual workers, aggrieved by the order of the Industrial Tribunal, filed individual writ petitions and the Food Corporation of India also filed separate writ petitions in respect of each worker aggrieved with some of the directions of the Central Government Industrial Tribunal, Hyderabad. As the common questions are involved, all these writ petitions are also heard together.

2. Brief facts that are necessary for deciding these writ petitions are as follows:-

Sarva Sri Md.Abibulla, T. Rama Krishna Murthy, Ch. Gladi, Mamidala Venkateswarlu, P. Venkateswarlu, T. Sambaiah, Somavarapu Mallikharjuna Rao, S. Brahma Reddy, Sd. Masthan, N. Nageswara Rao, A. Suri Babu, Gokina Venkat Rao, Smt. B. Teresamma and Smt. G. Suseela raised industrial disputes originally before Industrial Tribunal-cum-Labour Court, Guntur as I.D.Nos.61 to 73 & 121/1997 and the same were transferred to Central Government Industrial Tribunal-cum-Labour Court, Hyderabad after its constitution, which were renumbered as Industrial Disputes L.C.I.D.Nos.115 to 128/2002. (Petitioners who raised dispute before Industrial Tribunal are hereinafter referred to as workers). The Industrial Disputes were raised against Food Corporation of India (hereinafter referred to as employer).

2. Following is the version of the workers, it is the contention of the workers that they worked as unskilled labourers in the Food Corporation of India Modern Rice Mill, Sattenpalli from 01-09-1977 to 07-01-1981. In November 1981, all the workmen (casual labourers) were brought under the control of contractors without any notice or intimation to the workmen. Under the contractors, the workmen worked for more than five years and above, the workmen were paid difference of wages from 01-09-1977 to August, 1981 and also bonus for the year 1980-81. In September

1981, Management issued a circular dated 06-05-1987 for regularization of those who have completed three years period as on 05-06-1986 and all the workmen have completed service of more than three years directly under the FCI and also under the contractors as on the date of issue of circular dated 06-05-1987. Workmen learnt that in response to the Hyderabad Office Circulars, Unit Manager of Food Corporation of India, Sattenapally, transmitted all the files relating to workmen on 01-09-1990 to the District Manager, Gutnur. Subsequently, another circular was issued on 24-08-1992 calling for the particulars of casual/daily rated workers, who are left over, but the management, for the reasons best known to it, the particulars of these workmen have not been sent to Regional Manager's Office. During 1989-90, FCI has regularized number of workmen, who were engaged during 1972 & 1988 though they were not sponsored by the Employment Exchange. These workmen have completed more than 240 days of continuous service in a calendar year under various capacities in Food Corporation of India, Sattenapally. There is a direct relationship of master and servant between the FCI and workmen. In spite of number of representations, services of these workmen were not regularized and their names were not recommended for regularization. These workmen filed W.P.No.17306/1989 seeking regularization of services and this Court granted interim directions, directing the employer to consider the case of workmen for regularization, but there was no action. Thereafter, writ petition was partly allowed directing employer to consider the case of workmen afresh by taking into consideration their services either directly or under the contractor, if the workmen are able to show that they worked for more than five years by producing material evidence.

The workmen have submitted service certificates issued by authorities of Food Corporation of India and also produced documents showing that they have worked under the Contractor for more than

five years, but their representations were rejected. Employer filed writ appeal against the orders of learned Single Judge and that the writ appeal was allowed by observing that the disputes between the parties are questions of fact with regard to master and servant relationship and that can be decided only by labour Court by appreciating evidence and consequently, the workmen filed cases before the labour Court, which were registered as Industrial Disputes. Workmen filed I.A.No.123/1997 seeking direction to the FCI to produce all records that are said to have been transmitted to District Manager, Guntur on 01-01-1990 by the Unit Manger, Food Corporation of India, Sattenapally.

3. Employer filed counter to the said application contending that the records are not traceable in the Office of District Manager, Guntur and the Labour Court passed order that I.A., will be decided along with the Industrial Disputes. Ultimately, the Industrial Tribunal disposed of the cases filed by the workmen and passed award holding that Sri M. Venkateswarlu and Sri T. Sambaiah are to be taken as casual workers as they have proved that they worked continuously for 16 months & five years respectively with the Corporation and thereafter under the contractors, and the claim of other workers is not accepted, but it is observed that they may be given preference over others in case of employing casual labourers on daily wages by taking their seniority as of 1977 in Sattenapally Office. The labour Court also made it clear that the award shall apply only for engaging fresh casual labourers and they shall be no retrenchment on account of the award.

4. Following is the case of the employer:-

Food Corporation of India has established 25 Modern Rice Mills all over India in the year 1970 with an object to introduce Rice Milling Technology in the Country. Food Corporation of India, Modern

Rice Mill at Sattenapally as one among these 25 Modern Rice Mills. Corporation sanctioned permanent posts and recruited staff for running Modern Rice Mill at Sattenapally and for the nature of miscellaneous work, contractors were appointed one after one till the closure of the mill in the year 1994. Above referred workers never worked under the Corporation and the Corporation never engaged them as casual or daily rated workers. The Corporation has to follow prescribed procedure even for engaging casuals and shall issue appointment orders like one marked as Ex.M2. During enquiry of the industrial disputes, Industrial Tribunal, after thorough scrutiny of material, held that there is no relationship of master and servant between the Corporation and the workmen, but contrary to the said finding, award has been passed directing the Corporation to give preference over the others in the matter of employment of casual labourer by taking their seniority as of 1997 in Sattenapally or in Guntur District. Regulation No.9 of Food Corporation of India (Staff) Regulation 1971 deals with the procedure for recruitment of Class-IV employees with prescribed qualifications like age and educational qualifications.

The Industrial Tribunal, having noticed that the workmen worked under contractor and not in the Corporation, instead of passing nil award, some relief was granted in respect of workmen, who failed to establish, that they worked either directly under the Food Corporation of India or under the contractors employed by the Food Corporation of India. As per the Rules, the records relating to daily workers have to be preserved for three years only, therefore, the direction given by the Industrial Tribunal to give preference basing on the seniority is not possible due to the non-existence of the records.

5. The above are the main contentions and rival contentions of both parties supporting which advocates of respective parties advanced their arguments.

6. Now the point that would arise for my consideration in these writ petitions is whether order of the lower Tribunal dated 28-02-2003 is proper, correct and legal?

7. **Point:-** One of the contentions of the workmen is that the Food Corporation regularized services of number of persons during 1989-90 who were employed on daily rated wages in South Zone, but such a benefit was not extended to the petitioners. Even according to petitioners, all the workmen were unskilled labourer worked under Modern Rice Mill of Food Corporation of India at Sattenapally between 1977 & 1981.

All the workmen were brought under the control of contractors in November, 1981, they worked under various contractors.

In the year 1989, Zonal Manager, Food Corporation of India has called for particulars of casual/daily rated employees and the Unit Manager of Food Corporation of India, Modern Rice Mill, Sattenapally has transmitted full particulars of all the workmen along with records like Attendance Register and payment particulars. All the workmen have filed W.P.No.17306/1989 claiming regularization of services and that was partly allowed on 05-10-1994. Food Corporation of India filed writ appeal against the orders in W.P.No.17306/1989 in W.A.No.276/1995 and that writ appeal was allowed on 30-10-1996. A Division Bench of this Court directed the workmen to approach Industrial Tribunal-cum-labour Court and accordingly, workmen approached the Industrial Tribunal, which resulted in passing of Award dated 28-02-2003, which is questioned in these writ petitions.

In the writ appeal, this Court made the following observation:-

“Labour Court shall conduct enquiry in accordance with law after giving opportunity to both parties keeping in mind the principles laid down in the cases cited supra on the relevant issue and then pass appropriate orders as to the existence or otherwise of relationship of master and servant between the Corporation and 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 Corporation, then it shall also given a finding whether they are entitled for regularization of their services with all consequential benefits.”

8. Keeping this observation in mind, the Presiding Officer of the labour Court examined the issue and held that out of 14 petitioners, who approached the Industrial Tribunal, only three have established that there is Master and Servant relationship between them and the Food Corporation, and the rest of the petitioners failed in establishing the said relationship. So out of 14 workmen, only three of them namely; Sri Sambaiah,

T. Ramakrishna Murthy and P. Venkateswarlu could prove the relationship of Master and Servant and out of them only, two were held eligible who could prove that they have worked continuously and they are Sri Venkateswarlu and

Sri T. Sambaiah and Industrial Tribunal passed award with such findings. The Presiding Officer also held that in respect of other workmen, the Food Corporation of India shall give preference to them in case they engage any casual labourer on daily wages.

9. The main grievance of the remaining workmen is that they have filed I.A.No.123/19927 seeking direction to the Food Corporation of India to produce the records that were sent through letter dated 01-01-1990, but the Industrial Tribunal has not considered that application and when the Food Corporation of India has failed to produce those records, the Presiding Officer has not drawn adverse inference in favour of the workmen and that was the main grievance now agitated before me in these writ petitions.

10. Learned Advocate for workmen mainly relied on a decision of Hon'ble Supreme Court in **H.D SINGH vs. RESERVE BANK OF**

INDIA^[1]. In that case, the petitioner therein was appointed in April, 1974 as Tikka Mazdoor for helping the Examiners of Coins/Notes on daily wages of Rs.3/- and in June 1976, Reserve Bank of India issued a confidential circular stating *inter alia* that only non-matriculate Tikka Mazdoors may be considered for inclusion in List II, that “in order to keep the candidates so wait-listed outside the scope of Section 2 (oo) of the Industrial Disputes Act and as the appellant was matriculate, the name of the appellant was struck out from list-II and that was challenged on the ground that the action would amount to retrenchment under Section 2 (oo) and also violation of Section 25-F of the Industrial Disputes Act. In those circumstances, the Hon’ble Supreme Court held that termination would squarely come within Section 2 (a) of the Industrial Disputes Act and observed that the bank has deliberately indulged in unhealthy labour practice by rotating the employees like appellant to deny them benefits under the Industrial Law. Hon’ble Supreme Court observed as follows:-

“It has disturbed us to find that the appellant was denied job because, he had become better qualified. Perhaps, the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this Country and also not aware of the fact that graduates, both boys and girls sweep our roads and post graduates in hundreds, if not in thousands, apply for the posts of Peons.”

11. Here in our case, the workmen have not challenged the action of Food Corporation of India bringing all the workmen under the control of Contractors. If such an action is challenged, probably this decision might have helped the workmen, but here the award of the Industrial Tribunal is questioned mainly on the ground that it has not drawn the adverse inference when the Food Corporation of India has not produced the records said to have transmitted to Zonal Manager through letter dated 01-01-1990.

12. Learned counsel for the Food Corporation of India submitted

that main grievance of the writ petitioners herein is that some of the workmen were absorbed and their services were regularized and a discrimination was shown to the petitioners and therefore, the action of the Corporation is contrary to the principles of natural justice and violative of provisions of the Indian Constitution. He submitted that the petitioners have not placed any evidence before the Tribunal to show the alleged discrimination and without proving their claims, they are not entitled to ask the Tribunal to draw an adverse inference and grant the relief on the basis of weakness in the case of opposite party. He submitted that when the workmen specifically pleaded that they continuously worked for specified period, it is for them to prove the same. He submitted that if really they worked continuously as claimed, they too should have documents like those produced by other workmen in respect of whom the Industrial Tribunal has granted the relief. He submitted that the Industrial Tribunal has rightly discarded the claim of the other workmen, but went wrong in directing the Food Corporation of India to consider the cases of these workmen in the matter of employment of casual labour on daily wages. He further submitted that in **Durgapur Casual Workers Union vs. Food Corporation of India**^[2] Hon'ble Supreme Court, while considering the effect of Constitution Bench decision in **Secretary, State of Karnataka v. Uma Devi**^[3] held that the Hon'ble Supreme Court under Article 32 and the High Court under Article 226 should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

13. As rightly pointed out by Advocate for Food Corporation of India, the workmen have not placed any evidence to show that their recruitment was made regularly in terms of Constitutional Scheme or

the rules governing service conditions of employees of Food Corporation of India. Here the workmen questioned the award of the Industrial Tribunal on the ground that it has not properly appreciated evidence. So from the above referred decision relied on by the Food Corporation of India, it is clear, only when the recruitment is in accordance with the Constitutional Scheme or the procedure established, then only the employee will have a right of absorption or regularization, but here the petitioners have not placed any material to show that their recruitment was in pursuance of the Constitutional Scheme. On the other hand, it is clear from the material that all these workmen were brought under the control of contractors and they were worked only under the contractors, not under the control of Food Corporation of India. The Presiding Officer of the labour Court has elaborately discussed each and every aspect raised on behalf of both parties and came to a right conclusion, even for giving direction to the Food Corporation of India to give preference to the petitioners in the matter of employment of casual labour by the Food Corporation of India, the Presiding Officer has given cogent reasons for issuing such a direction.

14. On a close scrutiny of the entire material, I am of the considered view that there are absolutely no grounds to hold that the order of the labour Court is contrary to the provisions or contrary to the material on record and as such, these writ petitions are devoid of merits.

15. Accordingly, all the writ petitions are dismissed as devoid of merits. No costs.

16. As a sequel, miscellaneous petitions, if any, pending in these writ petitions, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:17.03.2016
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[\[1\]](#) (1985) 4 Supreme Court Cases 201
[\[2\]](#) LAWS (SC)-2014-12-18
[\[3\]](#) (2006) 4 SCC1