FOOD CORPORATION OF INDIA A

v.

GEN. SECY. FCI INDIA EMPLOYEES UNION & ORS.

(Civil Appeal No. 10499 of 2011)

AUGUST 20, 2018 B

[ABHAY MANOHAR SAPRE AND SANJAY KISHAN KAUL, JJ.]

Industrial Disputes Act, 1947: Regularization – Appellant-Government undertaking employed large number of employees to carry out its business operations – A dispute arose as to whether these 955 employees were employees of the said undertaking or they were employed by the contract labourers society to work in the undertaking to carry out their business operations and whether they were entitled to claim regularization of their services as its employees – Held: The Tribunal, on appreciating the evidence in its original jurisdiction, rightly concluded that firstly, the agreement with the contract labourer for doing the work had come to an end in 1991 and thereafter it was not renewed – Secondly, all the 955 workers were being paid wages directly by the appellant – Thirdly, the nature of work, which these workers were performing, was of a perennial nature in the set up of the appellant – Fourthly, all 955 workmen were performing their duties as permanent workers; and lastly, no evidence was adduced by the appellant in rebuttal to prove their case against the workers' Union – High Court was right in affirming the findings recorded by the Tribunal – Interference with the concurrent findings of the two courts not called for. C D E F

Dismissing the appeals, the Court

HELD: The very fact that the appellant failed to adduce any evidence to prove their case, the Industrial Tribunal was justified in drawing adverse inference against them. Indeed, nothing prevented the appellant from adducing evidence to prove the real state of affairs prevailing in their set up relating to these workers. It was, however, not done by the appellant for the reasons best known to them. It was not the case of the appellant that they were not afforded any opportunity to adduce evidence and nor any attempt was made by the appellant to adduce any G H

evidence in the writ petitions or in the intra court appeals and lastly even in these appeals to prove their case. That apart, the four findings of fact recorded against the appellant by the Industrial Tribunal were based on sufficient evidence adduced by the workers' Union. Indeed, these findings being concurrent in nature are binding on this Court while hearing appeals under Article 136 of the Constitution. [Paras 19, 20] [903-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10499 of 2011

From the Judgment and Order dated 13.12.2006 of the High Court of Madras at Chennai in Writ Appeal No. 3383 of 2003.

WITH

C.A. No. 10511 of 2011

C. U. Singh, S. R. Singh, Brijender Chahar, Sr. Advs., Y. Prabhakara Rao, J. P. Mishra, P. V. Dinesh, R. R. Kumar, Atulesh Kumar, Swetank Shantanu, Vishwa Pal Singh, Dr. Pooja Jha, Ronak Karanpuria, Sumit Sharma, Nagendra Singh, R. Prakash, Ms. Nandita Jha, Ajit Pudussery, K. Vijayan, Ajeet Singh Verma, C. Paramasivam, Rakesh K. Sharma, V. K. Sidharthan, Ms. Sridevi V. S., Sudarsh Menon, Bharat Sangal, Ms. Malini Poduval, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals are directed against the final judgment and order dated 13.12.2006 passed by the High Court of Madras at Chennai in Writ Appeal No.3383 & 3382 of 2003 whereby the High Court dismissed the appeals filed by appellant herein.

2. In order to appreciate the short controversy involved in these appeals, few relevant facts need to be mentioned *infra*.

3. The appellant is a Government of India Undertaking known as "Food Corporation of India" (hereinafter referred to as "the FCI"). The appellant is engaged in the business of sale, procurement, storage and distribution of food grains.

4. In order to carry out their business activities, which are spread all over the country, the appellant has established its Branch offices in every State. One such Branch office is at Chennai (TN). The appellant

has employed a large number of employees to carry out its business operations through their Chennai Branch office with which we are concerned in these appeals. A

5. In the year 1992, a dispute arose between the appellant (FCI) and around 955 employees working in the Branch office at Chennai as to whether these 955 employees are the employees of the FCI or they are employed by the contract labourers' Society to work in the FCI to carry out their business operations and secondly, whether these 955 employees are entitled to claim regularization of their services as FCI employees. B

6. The case of the appellant (FCI), in substance, was that these (955) employees were/are never the employees of the FCI but were/ are the employees of a contract labourers' Society though working in the establishment of the FCI for doing their work. It was stated that due to this reason, they are not entitled to claim the status of the employees of the FCI and nor are they entitled to claim any regularization of their services in the set up of the FCI as the employees of the FCI. It was stated that their remedy, if any, would be against the contract labourers' Society engaged by the FCI but not against the FCI. C D

7. On the other hand, the case of the workers' Union was that these 955 employees are, in fact, the employees of the FCI and being in their regular employment since inception have been discharging their duties regularly for doing the work of the FCI. It was contended that they are therefore entitled to claim the regularization of their services in the set up of the FCI. E

8. Since the aforementioned dispute could not be resolved amicably between the appellant and the workers' Union, the Government of India by order dated 06.04.1992 referred the said dispute to the Industrial Tribunal, Madras for its adjudication under Section 10 of the Industrial Disputes Act, 1947. F

9. The following reference was made for adjudication:

> **"Whether the action of the management of Food Corporation of India is denying to regularize 955 contract labourers engaged in management of Food Corporation of India, Godown, Avadi through TVK Cooperative Society in respect of names as given in Annexure is justified ? If not, to what relief they are entitled to?"** G H

A 10. Both the parties submitted their statements in ID No. 39/1992 & I.D. 55/1993 in support of their respective stand before the Industrial Tribunal. So far as the workers' Union (respondents herein) is concerned, they adduced the evidence to prove their case whereas the appellant (FCI) did not adduce any evidence to prove their case despite affording them an opportunity to adduce.

B

11. By awards dated 19.02.1997 & 29.07.1998, the Industrial Tribunal answered the reference in favour of the workers' Union and against the appellant. It was held that these 955 employees are entitled to be regularized in the services of the FCI.

C 12. The appellant (FCI) felt aggrieved and filed writ petitions before the High Court of Madras at Chennai. By order dated 07.08.2000, the Single Judge dismissed the writ petitions and upheld the award passed by the Industrial Tribunal. The appellant felt aggrieved and filed intra court appeals before the Division Bench.

D 13. By impugned order, the Division Bench dismissed the writ appeals and affirmed the order of the Single Judge and the awards of the Industrial Tribunal, which have given rise to filing of the present appeals by way of special leave by the FCI.

14. Having heard the learned counsel for the parties and on perusal E of the record of the case, we find no merit in these appeals.

15. We have perused the awards of the Industrial Tribunal, order of the Single Judge and the impugned order. Mere perusal of them would go to show that the Industrial Tribunal examined the question in right perspective on facts and the evidence adduced by the Union so also the Single Judge and lastly, the Division Bench.

F

16. It is evident that the Tribunal, on appreciating the evidence in its original jurisdiction, rightly concluded that firstly, the agreement with the contract labourer for doing the work had come to an end in 1991 and thereafter it was not renewed; Secondly, all the 955 workers were being G paid wages directly by the FCI; Thirdly, the nature of work, which these workers were performing, was of a perennial nature in the set up of the FCI; Fourthly, all 955 workmen were performing their duties as permanent workers; and lastly, no evidence was adduced by the FCI in rebuttal to prove their case against the workers' Union.

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17. The writ Court then re-examined the issues so also the Division Bench in the appeals with a view to find out as to whether the findings of the Industrial Tribunal are factually and legally sustainable or not. The High Court, by reasoned orders, passed in writ petitions and appeals affirmed the findings observing that none of the findings recorded by the Industrial Tribunal, which were impugned in the writ petitions and appeals, suffer from any kind of perversity or illegality so as to call for any interference by the High Court in writ petitions and appeals.

18. We are inclined to affirm the concurrent findings because, in our opinion, none of the findings though assailed in these appeals call for any interference.

19. In our opinion, the very fact that the appellant (FCI) failed to adduce any evidence to prove their case, the Industrial Tribunal was justified in drawing adverse inference against them. Indeed, nothing prevented the appellant from adducing evidence to prove the real state of affairs prevailing in their set up relating to these workers. It was, however, not done by the FCI for the reasons best known to them. It was not the case of the appellant (FCI) that they were not afforded any opportunity to adduce evidence and nor any attempt was made by the appellant to adduce any evidence in the writ petitions or in the intra court appeals and lastly even in these appeals to prove their case.

20. That apart, in our opinion, the four findings of fact recorded against the appellant by the Industrial Tribunal were based on sufficient evidence adduced by the workers' Union. Indeed, these findings being concurrent in nature are binding on this Court while hearing appeals under Article 136 of the Constitution.

21. These findings, in our opinion, were equally relevant for answering the question referred to the Tribunal and further they did not suffer from any kind of perversity or illegality so as to call for any interference as rightly held by the High Court.

22. In the light of the foregoing discussion, the reference was rightly answered in favour of the workers' Union.

23. It was then brought to our notice that similar industrial reference alike the one in the present case was also made in relation to the FCI Branch at West Bengal and the said reference was answered in favour of workers' Union. The matter was then taken to the High Court

A unsuccessfully and then carried to this Court at the instance of the FCI in Civil Appeal No.7452 of 2008 and the appeal was dismissed on 20.07.2017 resulting in upholding the award of the Industrial Tribunal. It was stated that the FCI then implemented the award, as is clear from the notice on 05.10.2017, in favour of the concerned workers. B e that as it may, since we have upheld the impugned order in this case on
B the facts arising in the case at hand, we need not place reliance on any other matter, which was not before the High Court.

24. In the light of the foregoing discussion and examining the issues arising in these appeals from all angles, we are of the considered opinion
C that the appellant (FCI) failed to make out any case, which may call for any interference in the impugned order.

25. In view of the foregoing discussion, the appeals fail and are accordingly dismissed.

Devika Gujral Appeals dismissed.