

K.K. SURESH & ANR. ETC.

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v.

FOOD CORPORATION OF INDIA & ORS. ETC.

(Civil Appeal Nos. 10502-10505 of 2011)

AUGUST 20, 2018

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

Industrial Disputes Act, 1947: Regularization – Claim for regularization by the appellants working as clerical staff – Plea of respondent-employer that appellants were not employees nor they were ever appointed by respondent in their set up but they were appointed as clerical staff by one cooperative society and therefore in the absence of any kind of relationship of the employer and employee between the appellants and the respondent, a relief of either absorption or regularization in the services of the respondent does not arise – Held: The facts involved in the case at hand clearly proved that there did not exist any kind of employee-employer relationship between the appellants and the respondent – Thus, the appellants not granted relief claimed.

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Dismissing the appeals, the Court

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HELD: 1. The appellants failed to adduce any evidence to prove existence of any relationship between them and the respondent; Second, when the documents on record showed that the appellants were appointed by the Head Load Workers Co-operative Society but not by the respondent then obviously the remedy of the appellants, if at all, in relation to their any service dispute was against the said Society being their employer but not against the respondent; Third, the respondent was able to prove with the aid of evidence that the appellants were in the employment of the said Society whereas the appellants were not able to prove with the aid of any documents that they were appointed by the respondent and how and on what basis they claimed to be in the employment of the respondent except to make an averment in the writ petitions in that behalf. It was not sufficient to grant any relief to the appellants. [Para 8] [907-G-H; 908-A-B]

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A **2. So far as the reference made by the appellants to one**
litigation decided by the Industrial Tribunal between one set of
persons and the respondent regarding the status of such persons
is concerned, it has no relevance for deciding this case and nor
it, in any way, helps the appellants for claiming relief against the
respondent. It is for the simple reasons that first, the case at
B hand arose out of the writ petitions whereas the case relied on
arose out of industrial reference decided by the Industrial
Tribunal; Second, the facts involved in the case at hand clearly
prove that there did not exist any kind of employee and employer
relationship between the appellants and the respondent; and
C lastly, there is no parity of any nature noticed on facts in the case
at hand and the case relied on by the appellants. [Paras 9 and 10]
[908-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10502-
10505 of 2011.

D From the Judgment and Order dated 28.06.2007 and 23.08.2007
of the High Court of Kerala at Ernakulam in Writ Appeal Nos. 479 of
2002 and 480 of 2002 and in R.P. Nos. 767 of 2007 and 768 of 2007
respectively]

E 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
F Sangal, Ms. Malini Poduval, Advs. with them for the appearing parties.

The Judgment of the Court was delivered by

G **ABHAY MANOHAR SAPRE, J.** 1. These appeals are directed
against the final judgment and order dated 28.06.2007 passed by the
High Court of Kerala at Ernakulam in Writ Appeal No.479 of 2002 and
Writ Appeal No.480 of 2002 whereby the High Court, by a common
judgment, dismissed the appeals filed by the appellants herein. Against
the said order, the appellants filed review petitions which were disposed
of by the High Court by order dated 23.08.2007 in R.P. No.767 of 2007
in Writ Appeal No.479 of 2002 and R.P. No.768 of 2007 in Writ Appeal
H No.480 of 2002.

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

3. The appellants claiming to be working as clerical staff filed writ petitions against the Food Corporation of India-FCI(Respondent No. 1 herein) in the Kerala High Court and prayed therein that their services be regularized on their respective posts on which they were working since 1997 in the set up of FCI. In other words, the appellants (petitioners therein) claimed a relief of regularization of their services in the set up of FCI as regular employees of the FCI. B

4. Respondent No.1 (FCI) contested the writ petitions *inter alia* on the ground that the appellants are not the employees of the FCI and nor were they ever appointed by the FCI in their set up but they (appellants) were appointed as clerical staff by one Co-Operative Society called “FCI Head Load workers Co-Operative Society”. It was, therefore, contended that in the absence of any kind of relationship of the employer and the employee between the appellants and the FCI, a relief of either absorption or regularization in the services of the FCI does not arise and nor any relief of this nature can be granted to the appellants against the FCI. C D

5. The Single Judge of the High Court, by order dated 16.01.2002, dismissed the appellants’ writ petitions. The appellants felt aggrieved and filed intra court appeals before the Division Bench. By impugned order, the Division Bench dismissed the appeals and affirmed the order of the Single Judge, which has given rise to filing of these appeals by special leave by the unsuccessful writ petitioners. E

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

7. In our considered opinion, the writ Court and the Division Bench were right in dismissing the appellants’ writ petitions and we do not find any reason to differ with the view taken by the two Courts below.

8. In the first place, the appellants failed to adduce any evidence to prove existence of any relationship between them and the FCI; Second, when the documents on record showed that the appellants were appointed by the FCI Head Load Workers Co-Operative Society but not by the FCI then obviously the remedy of the appellants, if at all, in relation to G

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A their any service dispute was against the said Society being their employer but not against the FCI; Third, the FCI was able to prove with the aid of evidence that the appellants were in the employment of the said Society whereas the appellants were not able to prove with the aid of any documents that they were appointed by the FCI and how and on what basis they claimed to be in the employment of the FCI except to make an averment in the writ petitions in that behalf. It was, in our opinion, not sufficient to grant any relief to the appellants.

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C 9. So far as the reference made by the appellants to one litigation decided by the Industrial Tribunal between one set of persons and the FCI regarding the status of such persons is concerned, in our view, it has no relevance for deciding this case and nor it, in any way, helps the appellants for claiming relief against the FCI.

D 10. It is for the simple reasons that first, the case at hand arose out of the writ petitions whereas the case relied on arose out of industrial reference decided by the Industrial Tribunal; Second, the facts involved in the case at hand clearly prove that there did not exist any kind of employee and employer relationship between the appellants and the FCI; and lastly, there is no parity of any nature noticed on facts in the case at hand and the case relied on by the appellants.

E 11. In view of the foregoing discussion, we find no good ground to take a different view than the one taken by the two Courts below.

12. The appeals are thus found to be devoid of any merit. They are accordingly dismissed.