

Workmen of the Food Corporation of India

Vs

Food Corporation of India

Civil Appeal No. 1055 (NL) of 1981

(D. A. Desai, V. Khalid, V. B. Eradi JJ)

28.02.1985

JUDGMENT

D. A. DESAI, J. -

1. Vacillation on the part of a public sector undertaking has pushed this trivial dispute to the Apex Court adding to the anxiety and misery on the part of lowest grade workmen and wasteful expenditure on futile litigation.
2. Food Corporation of India ('Corporation' for short) was set up under an Act of Parliament being the Food Corporations Act, 1964 ('Act' for short) to provide, amongst other, for the establishment of Food Corporations for the purpose of trading in foodgrains and other foodstuffs and for matters connected therewith and incidental thereto. For performance of the functions statutorily prescribed under Section 13 of the Act namely, to undertake the purchase, storage, movement, transport, distribution and sale of foodgrains and other foodstuffs, the Corporation has to set up godowns/depots and other storage facilities and to engage labour for handling foodgrains at the godowns or in transit. The Corporation adopted different methods at different places for employing labour for handling foodgrains. One such depot has been set up by the Corporation at Siliguri in West Bengal State. Number of workmen designated as handling mazdoor were employed at Siliguri Depot. At the relevant time, 464 workmen were attached to this depot. It appears initially a contractor was engaged by the Corporation for handling storage and transit of foodgrains at Siliguri Depot. Subsequently, by negotiations and settlements, the contract system was abolished and the workmen were directly paid the wages, presumably at piece rate for the service rendered by them by the Corporation. A further attempt was made to bring about a basic change in the system by reinducting the intermediary contractor. This attempt to change the status of the workmen from being workmen of the Corporation to becoming the labour employed by the contractor was resisted by Food Corporation of India Workers' Union - appellant herein - ('Union' for short) and it led to negotiations between the Corporation and the Union resulting in a settlement as evidenced by Union's letter dated January 18, 1973. Two terms of the settlement may be noticed here. They read as under :

(i) The FCI management agrees to take a final decision by April 1, 1973 on the demand of the Union for departmentalisation of the workers working in the Corporation's permanent owned large-size godowns, where work goes on all the year round in West Bengal, Bihar, Orissa, Assam and New Delhi.

##(ii) * * *(iii) * * *##

(iv) In the mean time the Food Corporation of India management agrees to introduce the direct payment system to the workers working in their owned godowns as also in the hired godowns at the same stations at which this system is introduced for the owned godowns in the aforesaid States.

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The payment to the workers will be made at the rates at which the contractors are being paid now.

These terms of settlement have been set out in the aforementioned letter of the Union. The Managing Director in his reply dated January 20, 1973 confirmed the decision taken as indicated in the letter under reply. It would thus appear that the negotiations ended in a settlement. The Corporation addressed communication No. A-50(38)/72-Labour dated April 28, 1973 to its various Regional Managers in the aforementioned five States pointing out therein that the procedure in respect of direct payment to labourers laid down in communication shall be followed. The method adopted is that the bills for the piece rate wages payable to handling mazdoors should be prepared by the Depot Staff, and the Sardar/Mondal would accept payment and sign bills on their behalf and distribute the wages to the handling labour. A copy of this letter was also sent to the Joint Secretary of the Union. By the letter dated October 29, 1973 of the District Manager of the Corporation at Siliguri addressed to the Joint Secretary of the Union, the Union was informed to advise the local representative of the workmen "to submit the wage bill in time in which particulars of per head out-turn by name" was required to be mentioned. The expression "per head out-turn" means the quantum of work rendered by each workman with his name so that his wage at piece rate can be calculated and paid to him. This system of payment was being implemented and was in vogue, till January 27, 1975. On account of some other industrial dispute, the members of the Union who were workmen attached to Siliguri Depot went on strike on and from January 28, 1975. This strike was called off on March 9, 1975. The usual management response followed and effective from March 10, 1975 the Corporation changed the method of payment superseding the direct payment system and reintroducing contractor system and that too without giving any notice of change as contemplated by Section 9-A of the Industrial Disputes Act, 1947 ('I.D. Act' for short). As a direct consequence of this change, the Corporation discontinued employment of 464 workmen attached to Siliguri Depot and brought in the intermediary contractor and treated the aforementioned workmen as the workmen employed by the contractor. The Union protested against this illegal action alleging that apart from being an unfair labour practice, the change-over was illegal and vindictive and malicious in character. According to the Union these 464 workmen were already accepted as the workmen of the Corporation and unless their services were legally terminated, they cannot be discontinued from service of the Corporation and some other master imposed upon them.

3. An industrial dispute in this behalf raised by the Union was referred by the Central Government to the Central Government Industrial Tribunal, Calcutta under Section 10 of the I.D. Act for adjudication. The reference was in the following terms :

Whether the discontinuance of employment of 464 workers of their Siliguri Depot with effect from July 21, 1975 by the management of Food Corporation of India is lawful and justified ? If not, to what relief are the workers entitled ?

4. The Corporation contested the reference inter alia contending that ordinarily the handling of foodgrains at various depots was entrusted to a contractor who employs his own workmen and that this system of employing the contractor was unavoidable because the receipt and distribution of

foodgrains at various depots is not a continuous process but solely depends upon the transport system and work is of a fluctuating nature. It was admitted that direct payment system was introduced at Siliguri Depot and the contractors were replaced by workers working under their Sardars and they were never accepted as direct workmen of the Corporation. It was contended that the Sardars replaced the contractor but the system remains the same and that the workers were paid the same rate as were paid to the contractors and at no point of time the workmen ever became the direct workmen of the Corporation. A reference to the strike of the workmen at the Siliguri Depot was made in the written statement and it was stated that the strike was not called off by the workmen unanimously but it had to be discontinued on account of prohibitory order made by the appropriate Government while exercising its power to make a reference of the existing industrial dispute under Section 10 of the I.D. Act for adjudication. It was contended that Section 9-A of the I.D. Act not attracted because there was no change which necessitated a notice. The allegations of victimisation and unfair labour practice were denied.

5. The rival contentions and the nature reference necessitated a decision on the question : whether the workmen represented by the Union and attached to Siliguri Depot were or had become at any point of time the workmen of the Corporation and whether an illegal change made with regard to their conditions of service by the Corporation ?

6. Chapter II-A was introduced in the Industrial Disputes Act, 1947 by Section 6 of the Amending Act 36 of 1956 which came into force on March 10, 1957. Section 9-A imposed an obligation on the employer to give a notice of change, if he proposes to effect any change in the conditions of service applicable to any workman in respect of matter specified in the Fourth Schedule. Item No. 1 in the Fourth Schedule reads : "wages, including the period and mode of payment". Thus if mode of payment in vogue is sought to be changed by the employer, Section 9-A imposes an obligation to give a notice of change to the workmen likely to be affected by such change in the prescribed manner cogently setting out the nature of the change proposed to be effected. Any change effected without following the procedure prescribed in Section 9-A will be punishable under Section 31(2) of the I.D. Act.

7. The dispute between the parties revolves round the status of 464 workmen whose discontinuance from employment resulted in the industrial dispute which was referred for adjudication. In short the dispute is : whether the workmen covered by the reference were the workmen of the Corporation or employed by the contractor and were therefore, the workmen of the contractor ? The Union contends that even though the workmen were initially engaged by the contractor when the work of handling foodgrains brought to Siliguri Depot was entrusted to a contractor but subsequently at least from April 1973, the intermediary contractor was removed and they became the workmen directly employed by the Corporation and were therefore, the workmen of the Corporation. On the other hand, the Corporation contends that the work of handling of foodgrains at Siliguri Depot was always entrusted to a contractor because the work is of a fluctuating and intermittent nature and therefore, it was not possible to have regular work force for handling the same. According to the Corporation, even when the so-called direct payment system was introduced after removing the contractor, it was basically a spill over of the old contract system save and except that the contractor was replaced by Sardars/Mondals to whom total payment on piece rate was made and who distributed the wages to the individual workman, the rate of payment remaining the same as was in vogue at the time of the contractor handled the work. It was therefore, submitted on behalf of the Corporation that at no point of time, the concerned workmen ever became the direct workmen of the Corporation and therefore, no question of giving a notice of change arose as required by Section 9-A of the I.D. Act.

8. The Tribunal held that initially there was a contractor engaged to undertake handling of foodgrains. It was however, held that prior to the introduction of 'direct payment system' in January 1973 at no point of the time the handling of foodgrains which means loading and unloading from wagons, trucks and then storing and stacking in the godowns, was ever undertaken by the Corporation and always the work was entrusted to a contractor who engaged his own workmen. The Tribunal accepted the contention of the Union that since January 2, 1973, the contractor system was discontinued and what is called the direct payment system was introduced. The Tribunal however proceeded to observe that this did not bring about any change in the status of the workmen and therefore, they never became the workmen of the Corporation. As a corollary, the Tribunal held that reintroduction of the contractor system in 1975 did not constitute discontinuance of the services of the affected workmen. In accordance with these findings, the Tribunal negated the claim of the workmen and made the award to that effect. Hence this appeal by special leave.

9. The first and the foremost question is : what is the effect of the introduction of direct payment system from January 2, 1973 on the status of the workmen involved in the reference ? The Tribunal proceeded to examine the evidence about the existence of contractor system prior to January 1973. That is hardly relevant. Parties are agreed that prior to January 2, 1973 the work of handling foodgrains at Siliguri Depot was entrusted by the Corporation to a contractor and the contractor engaged the workmen and the workmen received their salaries or wages or remuneration from the contractor as determined by the contractor or as agreed between the contractor and the workmen and therefore, the workmen were not the workmen of the Corporation. It is merely adding to the length of the judgment to examine evidence in respect of an admitted position. Correct approach is to accept this uncontroverted finding of the Tribunal.

10. It is not in dispute that since January 2, 1973 direct payment system was introduced. What does this direct payment system imply ? Has it any impact on the relation between the Corporation and the to whom by the change introducing direct payment system, the Corporation removed the contractor, took work from the workmen and agreed to pay each workman by name on piece rate basis according to his out-turn work ? Has it any bearing on the issue involved in the dispute, namely, on the status of the workmen ?

11. Briefly stated, when Corporation engaged a contractor for handling foodgrains at Siliguri Depot, the Corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the Corporation and the workmen. 'Workman' has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean "any person (including an apprentice) employed in any industry to do". The expression 'employed' has at least two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the term as contained in the Act. (Dhrangadhara Chemical Works Ltd. v. State of Saurashtra (1957 SCR 152 : AIR 1957 SC 264 : (1957) 1 LLJ 477 : 11 FJR 439).) Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as

it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the contract system was in vogue, the workmen employed by the contractor were certainly not the workmen of the Corporation and no claim to that effect has been made by the Union.

12. On January 2, 1973 pursuant to the agreement arrived at between the parties evidenced by the letter dated January 18, 1973, the parties agreed to introduce and did introduce the direct payment system to workmen working in the godowns owned by or hired by the Corporation. Introduction of this system is confirmed by the letter dated January 20, 1973 and was not disputed before us. What constitutes direct payment system becomes clear from the letter dated April 28, 1973 addressed by the Corporation to all its Regional Managers working at Calcutta, Patna, Gauhati and Bhubaneswar. As this has a direct bearing on the understanding of the concept of direct payment in contradistinction to the earlier prevailing system of engaging contractor and in supersession of it, the same may be reproduce in extenso. Says the letter :

The procedure in respect of direct payment to labourers laid down as under should be followed strictly :

- (1) The bills would be prepared by the Depot Staff.
- (2) The labour should authorise their Sardar/Mondal to accept payment and sign bills on their behalf and give acquittance.
- (3) The authorised Sardar/Mondals may then receive the money after giving acquittance.
- (4) The bill with acquittance in original should be with FCI.

Further amplifying this method, the Corporation by its letter dated October 29, 1973, directed as under :

I have been directed by Zonal Manager (East) that the payment to be made to the workers directly by us after the District Payment System.

You are therefore, requested to advise your local representatives to submit the bill in time in which particulars of per head out-turn by name should be mentioned, so that we do not feel any difficulty to pass the bill and to pay the workers in time. If formalities as directed by Zonal Manager are not observed we will not be able to pay the workers from next fortnight.

Examining the system of direct payment as set out in the letter dated October 29, 1973, it becomes crystal clear that name of every workman engaged to handle foodgrains at Siliguri Depot will be mustered in a register and his daily out-turn will be specified. The payment will be by piece rate as was in vogue at the time of the contractor system. The bill will be prepared setting out the names of the workmen and the out-turn of each. The pay bill will be prepared by the Depot staff who are regular employees of the Corporation. The payment will be made by the Corporation but will be distributed to each workman according to the piece rate by what are called Sardar/Mondal. The bill with the acquittance in original evidencing payment with the Corporation. It must at once be made clear that a salary or wages of the workman in an industrial undertaking can be monthly rated which requires the workmen to render service daily for specified number of hours but the rate per month is fixed. It can be piece rate correlated to daily production with an obligation to render service daily for

specified number of hours, the monthly wage bill being worked out according to production. Both the systems are known to be in vogue in industrial employment. When the contractor system was in vogue, the contractor was being paid in lump sum arrived at by multiplying the rate per bag to total number of bags. What number of workmen and for what length of time they were for doing the handling work was left to the discretion of the contractor. The Corporation had nothing to do how many workmen were employed nor the rate or method of payment by the contractor to the labour force employed by him. Corporation was solely concerned with the number of bags handled by the contractor. It was not a contract for supply of labour but it was specifically a contract for handling bags of foodgrains. When the direct payment system was introduced, the intermediary contractor disappeared from the picture. The work rendered by each workman had to be entered into a muster-roll register. The Corporation will distribute the wages calculated on piece rate to each workman and each workman was required to be a party to the acquittance roll to be retained by the Corporation. The wages were distributed by Sardars/Mondals.

13. Can there be any doubt about the relationship between the Corporation and the workmen since the date of abolition of the contract system and introduction of direct payment system as discussed herein ? It is however suggested that Sardars/Mondals were contractors. They were merely the agents of the Corporation for distributing the salary/wages earned by each workman as set out in the register to be maintained in respect of each workman by his name and the wages earned by him at the piece rate. Assuming as was contended by Mr Kacker on behalf of the respondent-Corporation that once the rate remained unchanged even after the removal of the contractor, direct payment system does not bring about any qualitative change in the status of workmen, a fact that stares into the eye and the one that cannot be overlooked is that the contractor had not undertaken the contract obligation for some altruistic motives. He had done so for earning profits. Now accepting what Mr Kacker and Mr Pai submitted that the rates remained unchanged the qualitative change in the position of workmen consequently would be, that the workmen's earnings at piece rate accelerated upward because the contractor's commission whatever he retained upto himself became available to the workmen and they benefited. Therefore, the abolition of the contract system and the introduction of direct payment system hereinbefore discussed brought about a basic qualitative change in the relationship between the Corporation and the workmen engaged for handling foodgrains in that on the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the Corporation and the workmen. To illustrate this point succinctly, let it be clear that it was obligatory for the Corporation to arrange for handling the bags of foodgrains. The workmen handled the foodgrains for the Corporation and none else. For this service rendered, the Corporation agreed to pay and paid wages at piece rate to each workman whose name appeared in the register to be maintained for the purpose as per the directions given by the District Manager. If the pay packets were actually distributed by the Sardars/Mondals, they can be said to be doing clerical work on behalf of the Corporation in the same manner as a clerk in the Accounts Department prepares and distributes pay packet for each employee of the Corporation month to month. If the clerk cannot be said to be employer, ipso facto the Sardars/Mondals could not be clothed with the status of the replaced contractor. The intermediary screen having disappeared, the direct relationship came into existence and the conclusion is inescapable that since the introduction of the direct payment system, the workmen became the workmen of the Corporation and a direct master-servant relationship came into existence.

14. The Tribunal fell into error when it failed to draw the logical and inescapable conclusion from the facts hereinbefore discussed and completely misdirected itself when it observed something contrary to record that "the contractor system was not discontinued but it was really snatched away by the mazdoors from the contractor". The finding apart from being perverse is contrary to record

and overlooks two important letters dated January 18, 1973 and April 28, 1973 by which the Union and the Managing Director respectively affirmed the voluntary settlement arrived at between the parties, both for abolishing the contract system and introducing the direct payment system. Therefore, the Tribunal fell into a serious error in overlooking relevant evidence and drawing surmises contrary to the record. Its finding, therefore, becomes unsustainable and cannot be upheld.

15. The next question to which we must address ourselves is whether once on the introduction of the direct payment system, the workmen acquired the status of the workmen of the Corporation, was it open to the Corporation to unilaterally discontinue the system without the consent of the workmen and reinduct contractor so as to again introduce a smoke-screen which may on paper effectively deny the status of being the workmen of the Corporation, acquired by these workmen. And on discontinuance of the system of direct payment, without their services by the Corporation, they obtain a fresh employment under the contractor. It is legally permissible? The question provides its own correct and effective answer. No employer since the introduction of the I.D. Act, 1947 and contrary to its Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the in force. Any termination of service contrary to the provisions of Standing Orders and provisions of the I.D. Act 1947 would be void. It is not necessary to call in aid precedents to substantiate this too obvious and well-established proposition. When workman working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatever name called and a fresh employment by another employer namely, the contractor. If the termination of service by the first employer is contrary to the well established legal position, the effect of the employment by the second employer is wholly irrelevant. No attempt was made to justify the termination of service of the aforementioned workers of the Corporation by the subtle device of introducing a contractor so as to bring about a cessation of contract of employment between the workmen and the Corporation and a fresh contract of employment between the workmen and the contractor. If what was intended to be done was retrenchment, ex facie the action is contrary to the provisions of Section 25-F of the I.D. Act, 1947. Viewed from either angle, the action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and ab initio void and such action would not alter, change or have any effect on the status of the aforementioned 464 workmen who had become the workmen of the Corporation.

16. Mr Kacker and Mr Pai, learned counsel on behalf of the Corporation urged that having regard to the functions for which the Food Corporation of India was set up under the Food Corporation Act, 1964, it can without incurring the liability of employing workmen where work is of an intermittent nature, employ a contractor for supply of labour or for handling certain works of the Corporation. Without in any way reflecting upon the bona fides of a public sector Corporation to engage a contractor for supply of labour treating it as a commodity we may assume that the Corporation can engage a contractor for supply of labour, the question is whether it has done so. The long title of the Act shows that the Act was enacted to provide for the establishment of Food Corporations for the purpose of trading in foodgrains and other foodstuffs and for matters connected therewith and incidental thereto. By Section 3 the Central Government was authorised to establish a Corporation to be known as the Food Corporation of India. Section 5 provides for the initial capital and for acquiring power to increase the capital in such a manner as the Central Government or the State Government as the case may be may determine, initial capital being provided by Central Government. Section 7 provides for the constitution of the Board of Directors. The management of

the Corporation is to vest in a Board of Directors and the Board of Directors in discharging its functions shall act amongst others according to the instructions on questions of policy as may be given by the Central Government. The annual net profit of the Food Corporation of India has to be paid to the Central Government (Section 33). Every Food Corporation has to submit to the Central Government an annual report of its working and affairs and the same has to be laid before the Houses of Parliament. Section 45 confers power on the Food Corporation to make regulations not inconsistent with the Act and the Rules thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Without prejudice to the generality of the power conferred by Section 45(1) the regulations must provide for, amongst others, the methods of appointment, the conditions of service and the scales of pay of the officers and employees of a Food Corporation other than the Secretary of the Food Corporation of India.

17. From the perusal of the scheme of the Act, it is undeniable that the Food Corporation of India is an instrumentality of the State comprehended in the expression 'other authority' in Article 12 of the Constitution and is subject amongst other things, to Part III of the Constitution. If so, it must act fairly so as not to violate Article 14 of the Constitution. Now we fail to understand how this scheme of the Act would permit the Corporation, an instrumentality of the State, to act in a manner thoroughly arbitrary by first keeping a contractor, removing him and reinducting him without a semblance of consideration for the fate of the workmen working for it or for its benefit or for some work connected with her functions Corporation. Therefore, the scheme of the Act has hardly any relevance save and except that its action is likely to be struck down as arbitrary being violative of Article 14, but it is not necessary to go so far because the relief under the Industrial Disputes Act is readily available to the workmen.

18. The submission that it was open to the Corporation to engage a contractor for handling of foodgrains may be true or legally acceptable; the question, however, is whether once some workmen became the workmen of the Corporation as hereinbefore discussed, was it open to the Corporation to induct a contractor and treat its workmen as workmen of the contractor. The answer is in the negative, for the reasons hereinbefore discussed. The agony consequent upon such submission may be unmasked. While the trend is in the direction of abolition of contract labour, this public sector undertaking appears to be completely oblivious to the trend and the pace-setter as enacted by the Parliament in the Contract Labour. (Regulation and Abolition) Act, 1970. An assertion in the Statement of and Reasons accompanying the Bill, which was enacted into the law, may help the Corporation in freeing itself from the traditional master-servant relationship and help it in becoming an ideal employer where exploitation in any form is wholly eschewed. The statement reads as under :

The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service, conditions of contract labour where the abolition was not possible.

The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The proposed Bill aimed at abolition of contract labour in respect of such categories as may be notified. The Corporation attempted by its action to reverse that trend which does no credit to it. We say no more save and except saying that where the law helps, such anti-labour

practices must be thwarted or nipped in the bud.

19. It is at this stage necessary to examine the implication of Section 9-A of the I.D. Act, 1947. As hereinbefore pointed out, Section 9-A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Section 9-A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides : "wages, including the period and mode of payment". By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Section 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

20. In view of the discussion, this appeal has to be allowed and the award of the Tribunal rejecting the reference and denying the benefit must be quashed and set aside and an award be made that the aforementioned 464 workmen who had become the workmen of the Corporation continued to be the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation. A formal award to that effect shall be made by the Tribunal.

21. As it was stated before this Court that these workmen continued to be employed, undoubtedly under the contractor since the illegal change was introduced, the question of paying back wages does not arise. The Tribunal, however, must satisfy itself before making the final award whether any workman was denied work and consequently wages. The Corporation shall pay costs quantified at Rs. 10,000 to the appellant-Union.

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