

Krishna Kurup

Vs

General Manager, Gujarat Refinery, Baroda

Civil Appeal No. 539 of 1985

(O. Chinnappa Reddy, M. M. Dutt JJ)

18.09.1986

JUDGMENT

DUTT, J. -

1. This appeal by special leave is directed against the judgment dated March 21, 1984 of the Gujarat High Court. The only question now involved in this appeal is whether 82 workmen should be directed to be absorbed by the respondent, Gujarat Refinery, Baroda. Initially the question related to 187 workmen including these 82 workmen whose services were alleged to have been terminated by the respondent by an oral order.

2. On October 18, 1984 when the special leave petition came up for hearing, Dr L.M. Singhvi, learned counsel for the respondent, inter alia, stated before the Court that 105 employees in respect of whom the Gujarat High Court had recorded a finding for their absorption would be absorbed subject to scrutiny, and that such absorption would be prospective. Thereafter, it appears that this Court by its order dated November 15, 1984 directed the respondent, Gujarat Refinery and its General Manager, to complete the absorption of 105 workmen. On February 21, 1985, the learned counsel for the respondent informed this Court that all the 105 employees had been absorbed. In the circumstances, this Court granted special leave for the remaining 82 workmen excluding the 105 workmen who had been absorbed by the respondent as regular employees.

3. So far as the remaining 82 workmen are concerned, this Court by its order dated January 16, 1986 directed the Labour Commissioner, Gujarat, to inquire as to whether they could be considered to be employees of the respondent having regard to the nature of their employment, the period for which they had been employed, off and on, and all other relevant factors. The parties were granted liberty to appear before the Labour Commissioner and adduce evidence. The Labour Commissioner was directed to submit his report of inquiry into the matter.

4. As directed, the Labour Commissioner held an inquiry and submitted a report to this Court. Before the Commissioner the case of the respondent as also of the contractor was that these workmen were engaged for emergency maintenance and shut-down jobs and were never engaged as regular employees of the respondent. The Labour Commissioner, after considering the evidence that was adduced before him by the parties including the workmen and the statements made by each of them found that the 82 workmen were not employees of the respondent, but they were contract labourers employed by the contractor.

5. The findings of the Labour Commissioner have been challenged before us by Mr Ramamurty, learned counsel for the appellant, on the ground that the Labour Commissioner had illegally placed

the onus on the workmen. It has been complained by the learned counsel that the respondent had not placed the relevant materials before the Labour Commissioner so as to enable him to come to the correct findings. Accordingly, it is submitted by him that the findings of the Labour Commissioner should not be taken notice of and it should be held that the 82 workmen were the regular employees of the respondent.

6. The question whether these 82 workmen had been engaged by the respondent as its regular employees or they had been engaged by the contractor for the purpose of emergency maintenance and shut-down jobs, is a question which is difficult for us to decide. The Labour Commissioner has examined each workman and also considered the documents produced by them and upon consideration of the same he came to the finding that they were not the regular employees of the respondent. It was the case of the respondent before the Labour Commissioner that as the 82 workmen were the employees of the contractors for the emergency maintenance and shut-down jobs, the respondent had no records of such workmen with them. All the records were maintained by the contractors. It does not appear that the Labour Commissioner had disbelieved the case of the respondent. In the circumstances, we do not think that the findings of the Labour Commissioner are vitiated as he held that the appellant had failed to prove that they were regular employees of the respondent.

7. It is also difficult for us to decide whether the 82 workmen were doing the same work as were being done by the 105 workmen, as contended by the learned counsel for the appellant. An affidavit has been filed by Mr S.C. Chakravorty, Chief Personnel and Administrative Manager of the respondent. In this affidavit, it has been stated by him that the respondent has not been able to provide work to all the 105 workmen, since absorbed. Only 22 workmen have been allotted work and the other 83 workmen have not been allotted work and have not been assigned any work whatsoever. Further, it is averred by him that the said 105 workmen have been absorbed and treated as regular employees of the respondent and they are entitled to all benefits, perquisites and emoluments as are available to other regular employees, and that the respondent suffers loss since, even though no work is performed by the 83 employees, they are being paid their regular emoluments, amenities, etc. Thus it appears that the said 105 workmen have been absorbed by the respondent as directed by this Court although the respondent is not in need of so many employees. Only 22 workmen have been provided with work and the remaining 83 are getting their emoluments as regular employees without doing any work. In such circumstances, we do not think that we should be justified in directing the respondent to absorb these 82 workmen.

8. For the reasons aforesaid, this appeal, so far as it relates to the 82 workmen, is dismissed. There will however, be no order as to costs.

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