SUPREME COURT OF INDIA

M/S Indian Farmers Fertilizer Coop. Ltd.

Vs.

Industrial Tribunal-I, Allahabad

C.A.No.2778 of 1997

(S. Rajendra Babu and Doraiswamy Raju JJ.)

06.03.2002

JUDGMENT

Rajendra Babu, J.

1. A reference was made to the Industrial Tribunal, Allahabad under the Industrial Disputes Act, 1947 as to whether it is justified for the appellant not to give work to 88 workmen whose names are mentioned in the Annexure to the reference order from the date indicated against each one of them and, if not, what consequential benefits should be given to them.

2. In the pleadings raised before the Tribunal, the workmen contended that they were engaged directly by the appellant but later on to evade the liability arising under the law, started showing them as mazdoor employed through a contractor and such entries are fake. The stand of the appellant has been that they are the employees of the contractor, if at all, and, therefore, they are governed by the Contract Labour [Regulation and Abolition] Act, 1970 and they are not entitled to any relief. Evidence was adduced before the Tribunal and five witnesses were examined on behalf of the workmen in support of their case and each one of them stated that the workmen in question were appointed by the officers of the appellant and the work was also assigned by them, under their instructions the workmen carried out their work. On behalf of the appellant, E.W.1, A.K.Dutta was examined who was the Manager of the Power Plant. He admitted that Ex.E-1 had been signed by him which indicated that between July 1985 to June 1986, M/s Industrial Suppliers were the contractors and Anil Kumar Misra was partner of this firm and in 1986, the contract was given in individual capacity to Anil Kumar Misra. V.P.Awasthi, who was examined as the second witness, admitted that Ex.W-7 was copies from the temporary attendance register and they had been prepared by him.

3. From the material available on record, the Tribunal came to the conclusion that it could not be disputed that 88 workmen in question were working in the power plant of the appellant but the only contention that was raised by the appellant was that those workmen were employed by the contractor. Ex.E-1, to which reference was made earlier, is a duty roster for the year 1985. A photo copy of this document was filed by the workmen with an

application dated May 6, 1988 and the original was produced by the appellant. A comparison of the two would indicate that the signature of the contractor was obtained on the original but the signature of the contract was not available on the photo copy which obviously showed that the signatures were subsequently obtained on this document. The Tribunal proceeding on that basis came to the conclusion that the duties were assigned to these 88 workmen by the management of the appellant; the contractor had no hand in the same and they were working at no stage under the supervision and control of the contractor; that they were ever paid their wages by the contractor and that it was also on record that there were 2 workmen in service since 1979, 25 since 1982, 19 since 1981, 37 since 1983 and 4 since 1984 besides one which entered into service in January 1986. There was no explanation as to why 87 workmen were in service even before the contract of M/s Industrial Suppliers started. Anil Kumar Misra ceased to have contract after 1986, even then these workmen continued to be in service in the establishment of the appellant and, therefore, the Tribunal concluded that the 88 workmen were never employed by any contractor much less Anil Kumar Misra and that they were direct employees of the appellant and their services had to be continued. The Tribunal passed an award stating that these workmen should be deemed to be continuing in service of the appellant from the date of retrenchment without break of service and would be entitled not only to their back wages from the date of their retrenchment upto date but to all benefits which regular employees of the appellant are entitled to as they are held to be regular workmen of the appellant.

4. Against that award, writ petition was preferred before the High Court. The High Court, after noticing the legal position, adverted to the findings recorded by the Tribunal that the 88 workmen were employees of the appellant even before the present contractor was given the contract and continued even after the termination of the contract of the said contractor; that they were working directly under the appellant; that they were also carrying on the work of a permanent nature and their work was outside the scope for which the contract was given to Anil Kumar Misra and, therefore, the High Court declined to interfere with the award made by the Tribunal. Hence, this appeal by special leave.

5. Before us, the contentions urged before the High Court are reiterated. The learned counsel for the appellant urged that the Tribunal had travelled far beyond the scope of the reference inasmuch as the question referred to it was only limited as to whether the appellant had wrongly terminated the services of 88 workmen. The question whether 88 workmen were employees of the appellant was completely outside the scope of the reference. Even otherwise, the findings recorded by the Tribunal had been recorded ignoring completely the material evidence on record and in this context, the learned counsel relied upon the decision in *Steel Authority of India vs. V.S.Yadav*[1]. The claim of the workmen has been that they have been employed by the appellant. When the stand of the appellant is that the workmen were not employees of the appellant but they were working under a contractor, necessarily the issue arose as to the nature of their employment inasmuch as the relief that would be granted to them would depend upon the same. In the circumstances, the nature of their employment, whether directly under the appellant or through the contractor, was necessarily to be decided. Even otherwise, a full reading of the reference would show that there was no indication that they had been employed by a contractor but their services had been terminated from the

respective date shown against them and whether the same was justified or not. In such a case, when a question was raised that the workmen in question were not the employees of the appellant, necessarily the Tribunal had to go into the question whether they were the employees of the appellant or not. On due appreciation of evidence, the Tribunal came to the conclusion that they are the employees of the appellant and that finding of fact was based on evidence. In our opinion, the conclusion reached by the Tribunal could not be seriously assailed by the learned counsel for the appellant. We find no justification to interfere with the award as affirmed by the High Court.

6. The appeal, therefore, stands dismissed. No costs.

[1]*1987 (55) FLR 268*