SUPREME COURT OF INDIA

Management, the Assistant Salt Commissioner

Vs.

Secretary, Central Salt Mazdoor Union

C.A.No.1324 of 2008

(S.B. Sinha andV.S. Sirpurkar JJ.)

15.02.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Assistant Salt Commissioner, the appellant herein, is responsible for monitoring production and supply of salt within his jurisdiction. Salt Commission is attached to the Department of Industrial Policy and Promotion (Salt Desk), Ministry of Commerce and Industry.

3. The Parliament enacted Central Excise and Salt Act, 1944 (the Act) to consolidate and amend the law relating to central duties of excise and to salt.

4. Chapter V of the said Act provides for special provisions relating to salt. Salt manufacture etc. is dealt with in Chapter VI of the Central Excise Rules, 1944. Rule 102 prohibits manufacture of salt except under a license. Such a license is to be granted by the Collector within the meaning of the provisions of the said Act. Rules 129 and 130 of the said Rules read as under: Rule 129. Licensees to maintain in good order roads, channels, reservoirs, etc. The licensee at each salt factory shall be bound, at his own expense, to construct and maintain within the limits of the factory in good repair to the satisfaction of the Collector all roads and all channels, reservoirs, embankments, drying grounds, platforms and other works used or intended to be used for the manufacture and storage of salt, and also any works wherever situated for the protection of the factory from inundation or for the supply of brine. Rule130. When works may be undertaken by Central Excise Department. If the licensee fails to execute the works specified in rule 129, or, with the sanction of the Central Government, whenever it appears desirable that any such work should be undertaken by the Central Excise

Department, the Collector may cause such works to be executed and may recover the cost thereof, in such proportions as may deem fit, from the licensees.

5. Respondents were said to have been appointed by the holders of licenses granted under the said Act. They were refused regular appointment by the Assistant Salt Commissioner, Tuticorin, whereupon an industrial dispute was raised. The appropriate Government made the following reference to the Labor Court for its adjudication:

> "Is the Assistant Salt Commissioner, Tuticorin justified in refusing regular employment to the 12 workmen (list enclosed) on the ground that they are employed to maintain salt platform mazdoor on behalf of the licensees and their appointment is made by the department only for the purpose of annual estimates? If not to what relief the concerned workmen are entitled to?"

6. According to the respondents, as they had been appointed by Assistant Salt Commissioner and have been working as Platform Mazdoor for a period ranging from 10 to 30 years and furthermore as they had completed more than 240 days work in a year, they should have been regularized in service. Before the Labor Court, inter alia, a contention was raised that the Platform Mazdoors were engaged on daily wages on behalf of the salt licensees as per Rules 121, 129 and 130 of the Rules and the amount of wages paid to them is recovered from the licensees by way of special cess. It was stated that the said method was adopted when the platform and drying grounds were being used jointly by a number of licensees. Before the learned Labor Court, however, no evidence was adduced on behalf of the appellant. In its order, the learned Labor Court held:

> "(1) Admittedly, respondents have been working in the Salt Department.
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> (2) They were appointed several decades back and have been working directly under the Department.
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> (3) Disciplinary proceedings are initiated by the Departmental Officials.
>
> (4) They have been given housing facilities as also earned leave facilities by the Department. On the said premise, it was held that they are the workmen employed by the Department itself."

7. A writ petition was preferred there against and a learned Single Judge of the High Court dismissed the same stating:

> "Apart from those particulars, one Arulamandam one of the workmen was examined as W.W.1. He asserted before the labor court that these workers have been appointed several decades ago and are working directly under the control and supervision of salt Department. It is further seen from his evidence that they have been provided with housing facility, served leave benefits etc. Through w.w.1 Ex.W.1 to W.27 were marked, which clearly prove the claim of the workmen. Admittedly, the management

had not let in oral or documentary evidence in support of their stand taken in their counter statement. It is also brought to my notice that, Ex.W3 proceedings dated 20.12.1991 of the Deputy Salt Commissioner, Madras addressed to the Secretary, Central Salt Mazdoor Union, which clearly shows that all the workmen are eligible to leave benefits. The oral evidence of w.w.1 and the abundant documentary evidence produced on the side of the workman prove their case said in the absence of any other contra evidence on the side of the management, I am of the view that the Labor Court has fully justified in passing an award regularizing their service as claimed. In the absence of any other material before this Court, I do not find any good reasons to interfere with the award of the Labor Court. Consequently, the writ petition fails and the same is dismissed. No costs."

8. An intra court appeal preferred there against has also been dismissed by the impugned judgment, stating:

> "From the materials on records, we find that the Industrial Dispute has been raised in the year 1992. Having regard to the peculiar facts and circumstances of the case, we are of the opinion that even though direction regarding to the extent that regularization is correct, such direction is to be modified to the extent that regularization should be given effect to from January 1992 and on that basis, necessary benefits shall be conferred on all the twelve persons concerned."

9. Mr. Radhakrishnan, learned senior counsel appearing on behalf of the appellant, submitted:

> "(1) The industrial dispute raised by the workmen was not maintainable as the matter relating to service of a Central Government employee is required to be adjudicated before the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985.
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> (2) Appellants having been performing a statutory duty, the impugned order is illegal.
>
> (3) The Commission is not an industry and they having been no sanctioned post, the impugned judgment cannot be sustained."

10. Mr. Jitendra Sharma, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted:

> "(1) that the question in relation to the jurisdiction of the Industrial Court having never been raised, the same should not be permitted to be raised for the first time before this Court;

(2) A finding of fact having been arrived at by the learned Labor Court that there exists a relationship of employer and employe between the appellant and the respondents, interference therewith by this Court is not warranted; and

(3) In any event, as out of the twelve workmen, six have already attained the age of superannuation, this Court may not exercise its discretionary jurisdiction under Section 136 of the Constitution of India. "

11. Matter pertaining to grant of license and terms and conditions there for are governed by a statute. Rule 129 imposes an obligation on the licensee, inter alia, to maintain the salt platform. Only in the event, the same is not properly maintained, the appellant can take over the work for such period as it may deem fit and proper. No statutory provision has been placed before us to show that the appellant had the jurisdiction in a case of the present nature, namely, to supervise salt platforms and drying grounds for a large number of licensees together and charge a special cess there for.

12. We do not know as to whether such an arrangement was made with an approval of the Commissioner ate of Salt. Being creatures of the statute, they were required to act within the four corners thereof and not de hors the same.

13. We are, thus, of the opinion that the appellant has exceeded to its jurisdiction in arriving at the aforementioned arrangements. Neither the Central Excise and Salt Act, 1944 nor the Rules framed there under empower the Assistant Salt Commissioner to take such a step.

14. We furthermore fail to understand as to on what basis, if the stand of the appellant is correct, the workmen have been granted housing facilities or earned leave, etc.

15. It is really a matter of grave concern that the authorities of the Central Government are becoming law unto themselves. We do not mean to say that there was any lack of bona fide on the part of the said officer but what we mean is that all activities of the authorities of the Central Government must have a statutory backing and the impugned action is beyond the scope thereof. We furthermore do not appreciate as to why, even in a case of this nature, no evidence was adduced. The least which would be done was to point out before the Labor Court that the licensees and the Department have entered into a mutual arrangement. It was expected that at least to the said extent, some evidence would be brought before the Labor Court. Some witnesses should have been examined to establish that a policy decision have been taken in that behalf within the statutory framework.

16. Evidently, there is no sanctioned post. Before making appointment of the respondents, the provisions of Articles 14 and 16 have not been complied with. We do not even know whether the Employment Exchange was notified in regard to the purported vacancies or not. Regularization does not mean permanency. In Secretary, *State of Karnataka & Ors. v. Uma Devi & Ors,* any appointment made de hors the rules, has been held to be illegal by a Constitution Bench of this Court.

17. We find from the award that a mention was made about a scheme of regularization from 1973, but neither the same was placed before neither us nor Mr. Sharma placed any reliance upon it. If there existed such a scheme, the same was required to be framed within the constitutional framework and in particular the equality clauses as enshrined under Articles 14 and 16 of the Constitution of India should have been complied with. This, however, would not mean that the Central Government would refuse to provide for the bare minimum wages to its workmen. The workmen were not told as to on whose behalf the Central Government was working. They were not only appointed, disciplinary actions were taken against some of them. Applying the relevant tests for determining the relationship of employer and employee, a finding of fact has been arrived at that such a relationship existed. The said finding being pure finding of fact is binding on us. The question must, therefore, be posed as to what would be the consequences there for.

18. If regularization means permanency, the workmen cannot be made permanent. For filling up the permanent posts, the posts must be created at the first instance. They must be sanctioned. Terms and conditions must be laid down by making Rules in terms of the proviso appended to Article 309 of the Constitution of India or by reason of an executive order made under Article 177 thereof by the Central Government.

19. We would assume that the industrial tribunal had no jurisdiction to decide such a question after enactment of Administrative Tribunal Act, 1985. But such a contention had never been raised. The matter remained pending before the Labor Court for a long time. We, therefore, should not permit the appellant to raise such a contention before us for the first time.

20. However, it must be borne in mind that the Central Government cannot be held to be bound by an act of one of its officers. In terms of the Rules, the job of a licensee could be taken over directly under Rule 130 of the Rules and not beyond the same. When a statutory action is performed, it is trite, it must be done in the manner laid down under the statute or not at all. All actions of the statutory authorities must be confined within the four corners of the statute. If the appellant was not authorized under the statute to take recourse to Rule 130 of the Rules for the purposes as mentioned in the written statement before the Labor Court, the said action itself must be held to be a nullity. In such a situation and particularly in view of the fact that in making recruitments of the respondents, the equality clauses contained in Articles 14 and 16 were not complied with, the respondents cannot derive any benefit there from.

21. We, in the peculiar facts and circumstances of the case, would, therefore, direct:

> "1. the remaining six workmen should be conferred all benefits which have been conferred to those who have since superannuated.

2. If no benefit had been conferred upon the retired employees, the Central Government shall, by way of compensation, pay a sum of Rs.1, 00,000/- to each of the workman.

3. The services of such respondents who are still working shall not be terminated except in accordance with law.

4. The Commissioner ate of Central Excise would issue necessary directions to all Assistant Salt Commissioners in regard to their performance of statutory duties in terms of Rules 121, 129 and 130 of the Rules.

5. The workmen must be paid the minimum wages fixed there for.

6. Appellant shall, subject to any statutory interdict may fix fair wages for the remaining six workmen."

22. The award passed by the Labor Court is set aside. Appeal is allowed subject to the aforementioned directions with costs quantified to Rs.10,000/- (Rupees ten thousand only).

[1] *(2006) 4 SCC 1*