Food Corporation of India and Others Vs Presiding Officer, Central Govt. Industrial Tribunal-Cum-Labour Court-I and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 31, 2007

Acts Referred: Constitution of India, 1950 â€" Article 226
Contract Labour (Regulation and Abolition) Act, 1970 â€" Section 10, 12, 23, 24, 25
Industrial Disputes Act, 1947 â€" Section 10, 2, 25F

Citation: (2008) 116 FLR 694 : (2008) 2 LLJ 434 : (2008) 149 PLR 101 : (2008) 2 RCR(Civil) 219

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.
This judgment shall dispose of 12 writ petitions, which have been directed against the six separate Awards dated

26.4.2005, made by the Industrial Tribunal-cum-Labour Court, Chandigarh, whereby the termination of six workmen have been held to be illegal

and consequently, the orders of re-instatement with continuity of service, but without any back wages, have been passed. Six petitions bearing

C.W.P. Nos. 20030, 20062, 20074, 20075, 20340 & 20138 of 2005 have been filed by the Food Corporation of India (hereinafter referred to

as "the Management Corporation"), aggrieved against the orders of declaring the termination of the workmen as illegal and their re-instatement;

and six petitions bearing C.W.P. Nos. 19544 to 19549 of 2006 have been filed by six different workmen, aggrieved against the part of the orders

denying them the relief of back wages. The Labour Court consolidated six references referred on the claims made by six different workmen, as in

all the six cases,-similar questions of fact and law were involved. Even the evidence led in all the six cases was the same. All the six workmen were

appointed between August, 1986 to December, 1987 and they were posted at Buffer Godown, Dhand (Kurukshetra) Centre of the Management

Corporation and their services were terminated on 30.3.1989. Since in the writ petitions filed by the Management Corporation as well as the

workmen, the same questions of law and facts are involved, therefore, these are being disposed of by this judgment.

2. The brief facts, which are necessary for the decision of these writ petitions, are given as under:

The Management Corporation is a statutory body established under the Food Corporation of India Act, 1964. It is engaged in procuring,

processing and storing the food grains all over the country. At different places, it has its offices, procurement centers and storage depots. By the

notification dated 29.11.1985 (Annexure P-1), issued by the Haryana Government, being the appropriate Government at that time, in exercise of

the powers conferred by Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred to as "the CLRA Act"),

prohibited employment of contract labour in 22 food storage depots, including all heads of the Food Corporation of India. The Dhand Buffer

Godown, in which all the six workmen worked, did not figure in the list of 22 prohibited centers. Thus, the Dhand Buffer Godown was not a

prohibited Centre. Therefore, it was permissible for the Management Corporation to engage or employ contract labour from the labour contractor

for that Centre. With the said purpose, the Management Corporation entered into an agreement dated 3.1.1986 (Annexure P-4) with the Ex-

Servicemen Security Services (respondent No. 3 herein) to supply security guards for their deployment at the Buffer Godown, Dhand

(Kurukshetra). The said agreement was also produced before the Labour Court as Ex. M2. It is pertinent to mention here that vide the Certificate

dated 4.7.1988 (Annexure P-2), the Management Corporation got itself registered with the Labour Commissioner (Central), Rohtak, u/s 7 of the

CLRA Act. Respondent No. 3, the Labour Contractor, also got itself registered with the Labour Department and got a licence dated 8.7.1988

(Annexure P-3) u/s 12 of the CLRA Act for providing contract labour service to the Management Corporation. Needless to state that the said

licence was not valid for the prohibited Centre of employment notified by the appropriate Government. The Dhand Store Depot was not the

prohibited Centre. Therefore, for that Centre, respondent No. 3 got supplied the contract labour to the Management Corporation. Accordingly, in

pursuance of the agreement (Annexure P-4), respondent No. 3 appointed six workmen as security guards and directed them to report to Assistant

Manager (Depot) for their duty. A copy of the appointment and posting letter dated 9.1.1987, issued by respondent No. 3, has been annexed with

the petitions as Annexure P-5. Thereafter, the six workmen performed their duties as security Guards at Buffer Godown, Dhand (Kurukshetra)

upto 30.3.1989. It is the case of the Management Corporation that after the expiry of the contract, respondent No. 3 terminated the services of

those six workmen. Thereafter, all the six workmen raised the separate industrial disputes u/s 10(2) of the Industrial Disputes Act, 1947

(hereinafter referred to as "the Act") alleging that they were the direct employees of the Management Corporation and their services were illegally

terminated by the Management Corporation, without complying with the provision of Section 25F of the Act. Thereupon, all the six references

were made to the Labour Court for their adjudication.

3. In the claim petitions, the workmen took the plea that they were, directly appointed as Security Guards by the Management Corporation for the

Dhand Buffer Go-down and since then, they worked at Buffer Godown, Dhand as direct employees of the Management Corporation. Their

presence was marked in the log book as well as in the register, in which the presence of the regular employees of the Management Corporation

was being marked. It was alleged that they worked as Security Guards with the Management Corporation for about three years and on

30.3.1989, their services were illegally terminated without complying with the provision of Section 25F of the Act. The workman did not implead

respondent No. 3 as a party, as they took the stand that they are the direct employees of the Management Corporation and they were never

employed by respondent No. 3. Therefore, there was no relationship of master and servant between them and respondent No. 3.

4. The Management Corporation contested the claim petitions filed by the workmen, by taking the plea that no relationship of master and servant

exists between the workmen and the Management Corporation. The workmen were employed by respondent No. 3 and the Management

Corporation had hired their services through the said labour contractor. They were never employed by the Management Corporation at its Dhand

Buffer Godown. The Management Corporation neither issued any appointment letter to any of the workmen nor paid any salary to them and since

the workmen were employed by respondent No. 3, the labour contractor, therefore, the workmen could not derive any benefit under the

provisions of the Act.

5. The Labour Court, after taking into consideration the evidence led by both the parties, decided the references in favour of the workmen and

held that they were the employees of the Management Corporation and their services were illegally terminated on 30.3.1989, in violation of

Section 25F of the Act. The workmen were ordered to be re-instated with continuity of service, though they were denied the back wages on the

ground that none of them filed affidavit to the effect that during the termination period, they remained unemployed. Copy of the impugned Award

has been annexed with the petitions as Annexure P-11. Hence, these 12 writ petitions have been filed i.e. six by the Management Corporation and

six by the workmen.

6. Shri O.P. Goel, Senior Advocate, learned Counsel for the Management Corporation, submitted that the Labour Court, without properly

considering the pleas raised and the evidence led by the Management Corporation, has recorded a wrong finding that the workmen were the direct

employees of the Management Corporation and their services were wrongly terminated by it, in violation of the provision of Section 25F of the

Act. Learned Counsel submitted that while coming to the said conclusion, the Labour Court has totally ignored the documentary as well as the oral

evidence led by the Management Corporation. In this regard, he submitted that the Labour Court has completely ignored the facts that the Dhand

Buffer Godown, where the workmen were engaged as Security Guards through the labour contractor-respondent No. 3, was not a prohibited

Centre as in the notification dated 29.11.1985 (Annexure P-1) issued by the appropriate Government, Dhand Depot does not figure in the list of

prohibited Centers. According to the learned Counsel, the Labour Court has also totally ignored the fact that The Management Corporation duly

got itself registered with the Labour Department u/s 7 of the CLRA Act vide Certificate of Registration dated 4.7.1988 (Annexure P-2). The said

registration permits the Management Corporation to engage contract labour for their deployment at the non-prohibited Centre. Learned Counsel

for the Management Corporation further submitted that the Labour Court has also ignored the fact that respondent No. 3, the labour contractor,

was also having a licence u/s 12 of the CLRA Act to provide contract labour services to an establishment, which was not a prohibited

establishment establishment for employment of contract labour. He further submitted that the Labour Court has totally misinterpreted the agreement

dated 3.1.1986 (Annexure P-4) entered into between the Management Corporation and respondent No. 3 for supplying Security Guards for

deployment at the non-prohibited Centers of the Management Corporation. The terms and conditions of the said agreement provide that the

payment on account of such supply of security guards will be made to the Security Services. The Security Guards will be employees of the

Security Services and they will not be entitled to any benefit of the Corporation and the Security Services will be their principal employer. It was

also agreed that the Security Guards, as provided by the Security Services, will be posted in depot and they will obey the instructions of the Depot

In-charge. Learned Counsel further submitted that the Labour Court has completely ignored the appointment letters issued by respondent No. 3 to

the workmen, vide which they were also directed to report for duty to Assistant Manager (Depot). In the said appointment letters, it was

categorically stated that respondent No. 3 reserves the right to terminate the services of the Security Guards at any time without giving any notice

or reason. Learned Counsel further submitted that the Labour Court has also completely ignored the statement made by the workmen in their

cross-examination, where they admitted that the Management Corporation has never issued any appointment letter to them. He further submitted

that the Labour Court has also totally ignored the statement of Shri Mohan Lal Jindal, who has categorically stated that the workman were

employed by respondent No. 3 in pursuance of the agreement dated 3.1.986 (Annexure P-4) and thereafter, they were deputed to work as

Security Guards at Buffer Godown, Dhand (Kurukshetra). The said witness was not cross-examined by counsel for the workmen on the said

point. Learned Counsel submitted that the Labour Court, while ignoring the documentary evidence as well as the oral evidence led by the

Management Corporation, has recorded the aforesaid finding merely on the basis of conjectures and the wrong inference drawn on account of

non-production of the record pertaining to the contract employment and the fact that the presence of the workmen was marked in the log book

maintained by the management Corporation. Learned Counsel submitted that the timings of opening and closing of Godown are required to be

maintained in the Log Book, therefore, it was signed by the Security Guard at his duty. Merely by signing of their arrival and departure in the Duty

Register will not confer upon the workmen the status of permanent employee of the Management Corporation. Learned Counsel submitted that the

Labour Court has completely ignored a decision of the Division bench of this Court in Gian Singh and Others Vs. Senior Regional Manager, Food

Corporation of India, Punjab Region and Others, , which provides that in absence of a notification by the appropriate Government u/s 10 of the

CLRA Act, prohibiting the employment of the contract labour in particular Godowns or Depots, the Food Corporation of India can employ

contract labour and the persons so employed would remain the employees of the contractor and not of the Corporation. Learned Counsel

submitted that the Awards made by the Labour Court are liable to be quashed, as on the face of the record of the case, the Labour Court has

recorded the finding while refusing to admit the admissible and material evidence and while recording the finding merely on the basis of conjectures.

7. On the other hand, learned Counsel for the workmen submitted that the Labour Court has committed no illegality while coming to the conclusion

that the workmen were direct employees of the Management Corporation and their services were illegally terminated without following the

provision of Section 25F of the Act. He submitted that the said finding has been recorded on the basis of the appreciation of evidence led by the

workmen as well as the Management Corporation. He further submitted that the Labour Court has rightly drawn the adverse inference against the

Management Corporation, as they did not produce the relevant record of the contract employment as well as the register of duty being maintained

by the Buffer Godown, Dhand (Kurukshetra).

8. Learned Counsel further submitted that even if it is assumed for the sake of arguments that the workmen were engaged through labour

contractor in terms of the agreement dated 3.1.1986 (Annexure P-4) for posting them as Security guards at Buffer Go-down, Dhand

(Kurukshetra), they will be deemed to be the direct employees of the Management Corporation, because their engagement as contract labour was

in violation of Sections 10, 7 and 12 of the CLRA Act, as on the date of the appointment of the workmen, neither the Management Corporation

was having a Certificate of Registration u/s 7 of the CLRA Act nor respondent No. 3 was holding a licence u/s 12 of the CLRA Act. Learned

Counsel further submitted that on the date of appointment, even no notification was issued with regard to the establishment in question of the

Management Corporation, as the notification dated 29.11.1985 (Annexure P-1) was not issued by the Central Government, which was the

appropriate Government. Learned Counsel, while referring to the decision of the Constitutional Bench of the Supreme Court in Steel Authority of

India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , submitted that as far as the Management

Corporation is concerned, the Central Government is the appropriate Government, who can issue notification u/s 10 of the Act with regard to the

establishment of the Management Corporation. Learned Counsel, while further referring to para 121 of the aforesaid decision of the Constitutional

Bench of the Supreme Court and a Division Bench judgment of this Court in Food Corporation of India, Haryana Region, Sector 17, Chandigarh

v. The Presiding Officer, Central Government Industrial Tribunal, Chandigarh (1927) 92 P.L.R. 22, submitted that if on the date of employment of

the contract labour, the Management Corporation did not get itself registered u/s 7 of the CLRA Act and on that date, the labour contractor was

having no licence u/s 12 of the CLRA Act, then the workmen employed by the Management Corporation through respondent No. 3 shall be

deemed to be the employees of the Management Corporation. Learned Counsel submitted that in the present cases, all the workmen were

appointed between August, 1986 to December, 1987 and the Management Corporation got itself registered u/s 7 of the CLRA Act vide

Certificate of Registration dated 4.7.1988 and the labour contractor i.e. respondent No. 3 got licence u/s 12 of the CLRA Act on 8.7.1988.

Therefore, on the day of employment of the workmen, neither the Management Corporation was registered with the Labour Department u/s 7 of

the CLRA Act nor respondent No. 3, the labour contractor, was having any licence for appointing the contract labour for the Management

Corporation. Therefore, learned Counsel submitted that there is no illegality in the finding of the Labour Court to the effect that the workmen were

the direct employees of the Management Corporation.

9. Learned Counsel, while referring to the Full Bench decision of this Court in Hari Palace, Ambala City v. The Presiding Officer, Labour Court

(1979) 81 P.L.R.720 and another decision of this Court in Kamaljit Singh v. Kurali Urban Co-operative Bank Ltd. 2004 (2) R.S.J. 723,

submitted that once the order of termination has been held to be illegal being violative of Section 25F of the Act and the workmen have been

ordered to be re-instated in service with continuity, then the workmen should be given the full back wages for the period between the date of

termination of their service and the date of Award. Learned Counsel submitted that in the present case, there was no justification for the Labour

Court to deny the total back wages to the workmen.

10. While replying to the alternative argument raised by learned Counsel for the workmen, learned Counsel for the Management Corporation

submitted that on 29.11.1985, when notification (Annexure P-1) was issued u/s 10 of the CLRA Act, as per the definition of the ''appropriate

Government'', the Haryana Government was the appropriate Government for issuance of the notification for the establishments of the Food

Corporation of India, which were located in the State of Haryana. Learned Counsel submitted that the definition of the ''appropriate Government''

was subsequently amended by the Contract Labour (Regulation and Abolition) Act (14 of 1986) with effect from 28.1.1986. Prior to the said

amendment, the question whether the Central Government or the State Government was the appropriate Government in relation to an

establishment is to be decided in accordance with the definition of the expression of appropriate Government as stood in the CLRA Act. Learned

Counsel for the Management Corporation submitted that this view has been expressed by the Constitutional Bench of the Supreme Court in Steel

Authority of India Ltd. v. National Union Water Front Workers and Ors. (supra). Therefore, it can not be said that the notification (Annexure P-1)

issued by the State Government with regard to establishment of the Food Corporation of India was not a valid notification, as the same was not

issued by the Central Government. Learned Counsel further submitted that a Division Bench of this Court in Gian Singh v. Senior Regional

Manager, Food Corporation of India, Punjab Region, Chandigarh (supra) has held that if the principal employer does not get registration as

required u/s 7 of the CLRA Act and or the labour contractor does not get a licence u/s 12 of the CLRA. Act, the person so appointed by the

principal employer through the labour contractor would not be deemed to be the direct employee of the principal employer. If the principal

employer without there being registration does employ the persons through such labour contractor, then only the penal provisions of Sections 23

and 24 of the CLRA Act will be attached and the principal employer can be proceeded against under these Sections, but the CLRA Act no where

provide that such employees employed through the labour contractor would become employees of the principal employer. Learned Counsel for

the Management Corporation submitted that the Division Bench decision of this Court was approved by the Supreme Court in Dena Nath and

others Vs. National Fertilisers Ltd. and others, , where the contrary view taken by the Madras, Bombay, Gajarat and Karnataka High Courts was

not approved. Learned Counsel further submitted that the view taken in Dena Nath''s case (supra) was again considered and approved in Steel

Authority of India Ltd. v. National Union Water Front Workers (supra).

11. In view of the aforesaid legal position, learned Counsel for the Management Corporation submitted that even if it is accepted that on the date

of employment of the contract labour through the labour contractor, the Management Corporation was not validly registered u/s 7 of the CLRA

Act and the labour contractor was having no licence u/s 12 of the CLRA Act, though on the date of termination, the Management Corporation and

the contract labourer were having the valid Certificate and the licence, the workmen could not be deemed to be the direct employees of the

Management Corporation. Therefore, the impugned Award passed by the Labour Court is liable to be quashed and the claims filed by the

workmen are liable to be rejected.

12. It is well settled that a writ court will not review finding of fact reached by the inferior court or the Tribunal, even if they are erroneous. A mere

wrong decision cannot be corrected by a writ of certiorari. It is only errors of law, which are apparent on the face of the record, and not errors of

facts, that can be corrected by certiorari. But if a finding of fact is based on no evidence or if the Tribunal has admitted inadmissible evidence,

which has influenced the fact, that would be regarded as error of law, which can be corrected by a writ of certiorari. The failure to consider

material evidence adduced by a party also amounts to an error of law apparent on the face of it. If while recording a finding of fact, the Tribunal

had erroneously refused to admit admissible and material evidence or erroneously admitted inadmissible evidence, which has influenced the

impugned finding; or if the finding is based on "no evidence"; that would be regarded as an error of law, which can be corrected by a writ of

certiorari. The principle of "no evidence" does not necessarily mean a complete absence of evidence. In other words, the test for determining the

question whether there is no evidence at all or the evidence is sufficient or adequate is to see whether the evidence on record as a whole is

reasonable culpable of supporting the conclusion. The judicial review of the Award of the Tribunal is open, if it is shown that the finding recorded is

wholly unwarranted by the evidence and no reasonable man would have arrived at the said conclusion or where a finding is based on no evidence

or where the finding is contrary to the evidence and is totally perverse.

13. In the light of the above legal principle, if the facts and evidence and the conclusion arrived at by the Labour Court are examined, I am of the

opinion that the learned Labour Court has erred in law, while recording the finding that the workmen were direct employees of the Management

Corporation and their services were wrongly terminated by the Management Corporation in violation of Section 25F of the Act. In my opinion,

from the evidence available on the record, no such conclusion could have been arrived by a reasonable person. The finding recorded by the

Labour Court is not only contrary to the evidence available on the record, but the same is also perverse.

14. The Management Corporation has placed on record the notification dated 29.11.1985 (Annexure P-1) issued by the appropriate Government

u/s 10(1) of the CLRA Act. According to this notification, the appropriate Government prohibited employment of contract labour in 22 Food

Storage Depots of the Management Corporation in Haryana. The Dhand Food Store department does not find mention in the said notification,

which implies that for the said Center, the Management Corporation would employs the contract labour through contractor. The Management

Corporation has also placed on record the copy of agreement dated 3.1.1986 (Annexure P-4), which was placed before the Labour Court as

Ex.M2, entered into between the Management Corporation and respondent No. 3 for providing Security Guards at Buffer Godown, Dhand

(Kurukshetra), which was not a prohibited Center. The Labour Court has discarded this document on the ground that it was valid only for 89 days

i.e. upto 1.4.1986 and the Management Corporation did not produce any document, whereby the period of validity of the said agreement was

extended. The Labour court has arrived at this conclusion on the basis of Clause 2 of the agreement, which read as under:

Whereas the SSS has offered to supply security guards to the Corporation for a period of 89 days initially, extendable by the period if required by

the corporation for the purpose of security under the terms and conditions set forth thereunder.

This clause does not provide the period of agreement. Rather, it says that any security Guard supplied by the Security Service to the Management

Corporation will be initially offered the employment for 89 days and the said time could be extended. Therefore, in my opinion, the Labour Court

has drawn a wrong conclusion, which became the basis of the impugned finding.

15. Further, the Management Corporation has placed on record the very important document i.e. the appointment letter of the workmen, issued by

respondent No. 3, copy of which has been annexed with the petition filed by the Management Corporation, as Annexure P-5. This appointment

letter was also placed before the Labour Court as Ex.M5, wherein it has been categorically mentioned that the workmen were appointed as

Security Guards by Ex. Servicemen Security Services, Kurukshetra (respondent No. 3) and they were directed to report to Assistant Manager

(Depot). In the said letter it was specifically pointed out that the respondent No. 3 reserves the right to terminate the services of the Security

Guards at any time without giving any notice or reason. This document clearly establish that the workmen were appointed by respondent No. 3

and not by the Management Corporation. This fact has been admitted by the workmen, when they appeared in the witness box. In the cross-

examination, they have stated that the Management Corporation has never issued them any appointment letter.

16. Furthermore, the Management Corporation has placed on record the affidavit of Shri M.L. Jindal (Annexure P-10) contractor, which was

placed before the Labour Court as Ex. M6. He has also appeared as MW. 2 as a witness. In the affidavit, he categorically deposed that the

workmen were employed by respondent No. 3 and the appointment letter (Ex.M5) was issued to them. He also deposed in the affidavit that after

the appointment, the workmen were deputed to work as casual Security Guards at Buffer Godown, Dhand (Kurukshetra) in pursuance of the

agreement dated 3.1.1986. In the cross-examination, counsel for the workmen did not suggest this witness that the workmen were not employed

by the contractor. The only question asked was that the workmen were working prior to obtaining the licence by the contractor u/s 12 of the

CLRA Act. The Labour Court has discharged this evidence on the ground that in the affidavit filed by Shri M.L. Jindal, some of the columns were

left blank, which were filled up by writing and the rest of the affidavit was typed one. The Labour Court has failed to note that six similar affidavits

have been filed by this witness and only the name, date of appointment and personal particulars of the six workmen were written in hand and the

remaining parts of the affidavits were typed and the affidavits were duly sworn in and there was no defect in the affidavits. Merely on the ground

that some part of the affidavit is hand written and the rest is typed one, the affidavit cannot be discarded. Thus, the Labour Court has wrongly

discarded the admissible piece of evidence on an unreasonable ground. The wrong discarding of this document has also become the foundation of

the wrong conclusion arrived at by the Labour Court.

17. The Management Corporation has also examined Shri R.K. Bansal, District Manager, FCI Kurukshetra, by tendering his affidavit as Ex. M1

in examination-in-chief. In this affidavit, this witness has categorically deposed that the workmen were never employed by the Management

Corporation and their services were hired through respondent No. 3 in accordance with the agreement dated 3.1.1986. This witness has further

deposed that every workman, including the contract labour, was required to sign his arrival and departure on the duty register. He had to put his

signature in the said register kept on the gate for that purpose. This witness has categorically deposed that name of the workmen did not enter into

pay roll of the Management Corporation. In fact, they are on the pay roll of the Security Agency i.e. respondent No. 3. This witness has further

deposed that the Management Corporation never paid any salary to the workmen, who were being paid only by respondent No. 3. The said

witness was not cross-examined by counsel for the workmen on all the aforesaid facts. His entire cross-examination in the case of Bhag Singh

workman is as under:

We used to employ the persons through the contractor who have the licence. Bhag Singh was not employed by the FCI. He was the labour of the

contractor.

Re-examination

Nil.

Similar is his cross-examination in the case of other five workmen. Therefore, the statement made by MW1, R.K. Bansal and documents

produced by him were not rebutted.

18. On the other hand, the workmen tendered their own affidavits as Ex. W1 and appeared in the witness box. They deposed that they were

appointed as Security Guards in the FCI Depot at Dhand and they always marked their presence in the log book and pacca register of the

Management Corporation. It has also been deposed that they receive the pay from the Management Corporation and they were never employed

by the contractor. But in their cross-examination, they have categorically stated that the Management Corporation did not issue them any

appointment letter, though they denied that they were appointed by respondent No. 3. The workmen did not lead any evidence to prove the fact

that they receive their salary directly from the Management Corporation. The Labour Court has illegally and unreasonably discarded the evidence

led by the Management Corporation on the ground that the Management Corporation has failed to produce any document which can corroborate

the existence of the agreement between the contractor and the Management Corporation. It has been held that the office order (Ex. P5) showing

appointment of the workmen by the Management Corporation cannot prove anything in the absence of any agreement. On the basis of such

perverse reasoning, the Labour Court has come to the conclusion that the workmen are proved to be the direct employees of the Management

Corporation. It has been observed that the workmen are poor and illiterate and the Management Corporation did not produce any cogent

document to show that the workmen were appointed by the contractor. The Management Corporation has also not produced the register, in which

the presence of the workmen was being marked. In view of these facts, it has been held by the Labour Court that the uncontroverted and

unshakable evidence of the workmen is sufficient to hold that the workmen are the employees of the Management Corporation.

19. In my opinion, the conclusion arrived at by the Labour Court could not have been drawn by a reasonable person, on the basis of the evidence

available on the record. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is

intended, does not extend to reading in the provisions of the Act what the legislature has not provided. Therefore, without there being any evidence

supporting the plea of the workmen that they were direct employees of the Management Corporation, the Labour Court could not have come to a

wrong conclusion to that effect, merely on the ground that the workmen are poor and illiterate persons. Therefore, in my opinion, in the facts and

circumstances of the case and the documentary as well as oral evidence available on the record, the finding recorded by the Labour Court to the

effect that the workmen were the direct employees of the Management Corporation is liable to be set aside being error of law.

20. The next question, which is to be answered is whether the workmen can be deemed to be direct employees of the Management Corporation,

because their employment as contract labour was in violation of Sections 10, 7 and 12 of the CLRA Act, as on the date of their appointment,

neither the Management Corporation was having a Certificate of Registration u/s 7 of the CLRA Act nor respondent No. 3 was holding a licence

u/s 12 of the CLRA Act. It is further argued by counsel for the workmen that on the date of appointment of the workmen, even no notification u/s

10(1) of the CLRA Act was issued with regard to the establishment of the Management Corporation, as the notification dated 29.11.1985

(Annexure P-1) was not issued by the Central Government, which was the appropriate Government. Undisputedly, the services of the workmen

were engaged through respondent No. 3, the labour contractor, between August, 1986 to December, 1987 and the Management Corporation got

itself registered u/s 7 of the CLRA Act vide Certificate of Registration dated 4.7.1988 and the labour contractor i.e. respondent No. 3 got licence

u/s 12 of the CLRA Act on 8.7.1988. Therefore, on the date of employment of the workmen, neither the Management Corporation was registered

with the Labour Department u/s 7 of the CLRA Act nor respondent No. 3, the labour contractor, was having any licence for appointing the

contract labour for the Management Corporation. However, on the date of termination of their services i.e. 30.3.1989, the Management

Corporation was registered with the Labour department u/s 7 of the CLRA Act and the labour contractor was having a licence for appointing the

contract labour for the Management Corporation u/s 12 of the CLRA Act. Vide notification dated 29.11.1985 (Annexure P-1), the State of

Government, which was the appropriate Government for all the store depots situated in the territory of Haryana, prohibited employment of

contract labour in 22 Food Storage depots. In that list, Buffer Godown, Dhand (Kurukshetra) was not mentioned. In view of the said notification,

Buffer Godown, Dhand (Kurukshetra) was not the prohibited Center, where the Management Corporation was prohibited from engaging contract

labour.

21. The contention of the learned Counsel for the workmen that the said notification was not issued by the appropriate Government, as in the case

of the Management Corporation, the Central Government was the appropriate government, cannot be accepted. When the said notification was

issued on 29.11.1985, the Haryana Government was the appropriate government for issuance of notification u/s 10(1) of the CLRA Act for the

establishment of FCI located in the State of Haryana, as per the definition of appropriate government, prevalent at that time. The definition of

''appropriate government'' was subsequently amended by the Contract Labour (Regulation and Abolition) Act (14 of 1986) with effect from

28.1.986. Prior to the said amendment, only the State of Haryana was the appropriate government to issue the said notification as per the

definition of the expression of appropriate government. In Steel Authority of India Ltd. v. National Union Water Front Workers, (supra), the

Constitutional Bench of the Supreme Court has observed that before January 28, 1986, the determination of the question whether Central

Government or the State Government was the Appropriate Government in relation to an establishment, would depend upon the answer to the

question whether the industry in question is carried on by or under the authority of Central Government or pertain to any specified controlled

industry or establishment of any Railway, cantonment board, Banking of Insurance establishment Central Government will be the "appropriate

Government" and in respect of other establishments the State in which the establishment is situated would be the "appropriate Government". After

28.1.2006 in view of new definition of the word, the answer, as to which is "appropriate Government" is to be found in Section 2(a) of the

Industrial Disputes Act, 1947 under which in respect of Central Government company/undertaking or an industry carried on by or under the

authority of the Central Government or railway company or specified controlled industry, the Central Government shall be the appropriate

authority and in relation to any other establishment the Government of the State in which the establishment is located shall be the appropriate

Government. The question with regard to the Appropriate Government in relation to an establishment is to be decided in accordance with the new

definition of the Appropriate Government given in the amended Act. Since according to the unamended definition of the Appropriate Government

u/s 2, the State of Haryana was the appropriate government, therefore, I do not find any force in the contention of learned Counsel for the

workmen that the notification dated 29.11.1985 (Annexure P-1) was not issued by the appropriate government and the same was not a valid

notification. Even otherwise the Division Bench of this Court in Gian Singh v. Senior Regional Manager, Food Corporation of India, Punjab

Region, Chandigarh (supra) has held that in absence of a notification by appropriate government u/s 10 of the CLRA Act prohibiting the

employment of contract labour, the FCI can employ contract labour and the persons so employed would remain the employees of the contractor

and not of the Corporation.

22. The alternate contention raised by learned Counsel for the workmen that the workmen would be deemed to be direct employees of the

Management Corporation, because their engagement as contract labour was in violation of Sections 7 and 12 of the CLRA Act, also cannot be

accepted. This question was considered by a Division Bench of this Court in Gian Singh v. Senior Regional Manager, Food Corporation of India,

Punjab Region, Chandigarh (supra) and it, was held that if a principle employer does employs the persons through the contractor who is having no

licence u/s 12 of the CLRA Act, then only penal provisions of Section 23 and 25 of the said Act are attracted, i.e. the principle employer can be

prosecuted against under these Sections, but the CLRA Act no where provides that such employees employed through the contractor would

become employees of the principle employer. In this Division Bench judgment, the earlier Division Bench decision of this Court in Food

Corporation of India, Haryana Region, Sector 17, Chandigarh v. The Presiding Officer, Central Government Industrial Tribunal, Chandigarh

(supra) was also considered and was not followed, as one of the judge, who was Member of that Division Bench, had subsequently taken the

view, as taken by the Subsequent Division Bench. This judgment of the Division Bench of this Court was affirmed by the Supreme Court in Dena

Nath v. National Fertilizers Ltd. (supra). The Supreme Court noticed that there was a direct conflict between the decisions of the High Courts of

Punjab, Kerala on the one hand and the decisions of Madras, Bombay, Gujarat and Karnataka High courts on the other. The view taken by the

High Courts Punjab and Kerala was that the only consequence of non-compliance either by the principal employer of Section 7 of the CLRA Act

or by the contractor in complying with Section 12 of the CLRA Act is that they are liable for prosecution under the Act; whereas the view taken

by the Madras, Bombay, Gujarat and Karnataka High Courts was that in such a situation the contract labour becomes directly the employee of the

principal employer. The Supreme Court, after considering the various provisions of the CLRA Act and the other decisions, approved the view

taken by the High Courts of Punjab and Kerala. It was held that the CLRA Act as can be seen from the scheme of the Act, merely regulates the

employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total

abolition of contract labour but it provides for its abolition by the appropriate Government in appropriate cases u/s 10 of the Act. It was further

held that if the appropriate Government has not prohibited the contract labour in a particular establishment by issuing notification u/s 10 of the

CLRA act, then employment of the contract labour through the contractor is not prohibited. If by engaging the contract labour and by prohibiting

the services of the contract labour by the contractor to the principal employer, the provisions of Sections 7 and 12 of the CLRA Act have been

violated, the only consequence of those violations will be as envisaged under Sections 23 and 25 of the CLRA Act and the contract labour

engaged in violation of the provisions of Sections 7 and 12 of the CLRA Act cannot be deemed to be the employees of the principal employer;

and the High Court in exercise of power under Article 226 of the Constitution of India can not issue a mandamus for deeming them as having

become the employees of the principal employer. The decision of Dena Nath v. National Fertilizers Ltd. and Ors. (supra) was considered by the

Constitutional Bench of the Supreme court in Steel Authority of India Ltd. and Ors. v. National Union Water Front Workers and Ors. (supra), in

the light of 3 Judges Bench judgment of the Supreme Court in Air India Statutory Corporation v. United Labour Union and Ors. J.T. 1996 (11)

S.C. 109, in which it was held that when the engagement of contract labour stood prohibited on publication of the notification u/s 10(1) of the

CLRA Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the

workmen and the principal employer. While approving the decision of Dena Nath''s case (supra) and over-ruling the decision of AIR India

Statutory Corporation and Ors. v. United Labour Union and Ors. (supra), the Supreme Court observed as under:

94. In Dena Nath''s Case (supra), a two-judge bench of this Court considered the question, whether as a consequence of non-compliance of

Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labourer employed by the principal

employer would become the employees of the principal employer. Having noticed the observation of the three-judge bench of this Court in The

Standard-Vacuum''s case (supra) and having pointed out that the guidelines enumerated in Sub-section (2) of Section 10 of the Act are practically

based on the guidelines given by the tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and

25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the rules,

the High Court in proceedings under Article 226 of the constitution could not issue any mandamus for deeming the contract labour as having

become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question amount various High

Courts. It was further held that neither the Act nor the rules framed by the central government or by any appropriate government provided that

upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer.

xxxx

102. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend

to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy

or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of

service of the contract labour and authorises in Section 10(1) prohibition of contract labour system by the appropriate government on

consideration of the factors enumerated in Sub-section (2) of Section 10 of the act among other relevant factors. But, the presence of some or all

those factors, in our view, provide no ground for absorption of contract labour on issuing notification under Sub-section (1) of Section 10.

Admittedly when the concept of automatic absorption of contractor labourer as a consequence of issuing notification u/s 10(1) by the appropriate

government, is not alluded to either in Section 10 or at any other place in the act and the consequence of violation of Sections 7 and 12 of the

CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified

remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in

the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far

beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. We have already held

above, on consideration of various aspects, that it is difficult to accept that the Parliament intended absorption of contract labour on issue of

abolition notification u/s 10(1) of CLRA Act.

We have gone through the decisions of this Court in V.S.T. Industries case (supra), G.B. Pant University''s case (supra) and Mohammed Aslam''s

case (supra). All of them relate to statutory liability to maintain the canteen by the principal employer in the factory/establishment. That is why in

those cases, as in The Saraspur Mills'' case (supra), the contract labourer working in the canteen were treated as workers of the principal

employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour

system being abolished under Sub-section (1) of Section 10 of the CLRA Act the contract labourer working in the establishment of the principal

employer has to be absorbed as regular employees of the establishment.

103. An analysis of the case discussed above, shows that they fall in three classes; (i) where contract labourer is engaged in or in connection with

the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudicator/court ordered abolition of

contract labour or because the appropriate government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract

labourer working in the establishment was ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case

the contract labourer working the establishment of the principal employer was held, in tact and in reality, the employees of the principal employer

himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the court pierced the veil and declared the

correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of

maintaining canteen in an establishment the principal employer availed the services of a contractor and the courts have held that the contract

labourer would indeed be the employees of the principal employer.

23. In view of the said legal position, there is no force in the contention of learned Counsel for the workmen that in view of the fact that the

Management Corporation was not having Certificate of Registration u/s 7 of the CLRA Act and the labour Contractor was not having any licence

u/s 12 of the CLRA Act on the date when the workmen were employed, the workmen should be deemed to be the direct employees of the

Management Corporation.

24. During the course of arguments, learned Counsel for the workmen put much emphasis on the following observation of the Supreme Court in

Steel Authority of India Ltd. and Ors. v. National Union Water Front Workers and Ors. (supra) and contended that in view of these observations,

the workmen are to be absolved in the employment of the Management Corporation:

On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labourer or otherwise, in an industrial dispute

brought before it by any contract labourer in regard to. conditions of service, the industrial adjudicator will have to consider the question whether

the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of

contract labourer for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial

legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called

contract labourer will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract

labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para 6 hereunder. (6) if

the contract is found to be genuine and prohibition notification u/s 10(1) of the CLRA Act in respect of the concerned establishment has been

issued by the appropriate government, prohibiting employment of contract labourer in any process, operation or other work of any establishment

and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give

preference to the erstwhile contract labourer, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age

appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the

condition as to academic qualifications other than technical qualifications.

In my opinion, the aforesaid observations do not advance the case of the workmen. If an industrial establishment is permitted to employ contract

labourer through a contractor, engaging of such contract labour must be bonafide. In case it is found that engaging of contract labour was not

bonafide and it was a mere camouflage then in those cases, the contract labour employed by the principal employer is to be treated as employee of

the principal employer, who can be directed to regularise service of the contract labour in the concerned establishment. This is not the case of the

workmen here. It is not the case of the workmen either in the pleading or during the course of arguments that their engagement through contract

labour was not bonafide and it was a mere camouflage. Rather their case is that they were directly employed by the Management Corporation.

Therefore, no benefit can be given to the workmen on the basis of the aforesaid observations made by the Supreme Court.

25. In view of the above, C.W.Ps. No. 20030, 20062, 20074, 20075, 20138 & 20340 of 2005, filed by the Management Corporation are

allowed and the impugned Award passed by the Labour Court is set aside. C.W.Ps. No. 19544 to 19549 of 2006, filed by the workmen are

dismissed with no order as to costs.