
(2002) 5 ALD 118(1) : (2002) 5 ALD 118

Andhra Pradesh High Court

Case No: WA No"s. 559 and 1267 of 2000

Ramagundam Area
Casual and Contract
Workers Union

APPELLANT

Vs

Fertiliser Corporation of
India (FCI) and Others

RESPONDENT

Date of Decision: July 15, 2002

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2002) 5 ALD 118(1) : (2002) 5 ALD 118

Hon'ble Judges: S.R. Nayak, J; Dalava Subrahmanyam, J

Bench: Division Bench

Advocate: K. Balagopal and C.R. Sridharan, for the Appellant; D. Gopal Rao and C.R. Sridharan, for the Respondent

Judgement

S.R. Nayak, J.

WA No.559 of 2000 is by Ramagundam Area Casual and Contract Workers Union represented by its Secretary K.

Venkataiah whereas WA No. 1267 of 2000 is by the Fertilizer Corporation of India, Karimnagar. Both the appeals are directed against the same

order of the learned single Judge dated 25-4-2000 made in WP No.6851 of 1998.

2. The appellant in WA No.559 of 2000 filed the above writ petition for mandamus or any other appropriate order or direction declaring the

action of the Management of Fertilizer Corporation of India and its authorities in not regularizing the services of the canteen workers, who are the

members of the petitioner association, as illegal and seeking direction to the Management to regularize the services of the canteen workers.

3. The case of the writ petitioner-Union, as set out in the writ affidavit, is the following:-
The Management has been running the canteen in the

fertilizer unit since 1979 onwards as required under the provisions of the Factories Act. The management used to call for tenders for awarding

contract of running the canteen in the factory premises every year. The management used to supply materials needed and take care of the

management of the canteen. While the matter stood thus, the management decided to hand over the management of the canteen to a private

contractor, arbitrarily with mala fide intention to deprive the members of the petitioner-union of their service benefits. If the management of the

canteen is taken over by a private contractor, the services of the members of the petitioner-union will be disengaged and the private contractor will

engage his own people, even though they have put in more than 15 years of service.

4. The writ petition was opposed by the management of the Fertilizer Corporation of India, the 1st respondent herein by filing a detailed counter-

affidavit denying all the material allegations of the petitioner-Union. It was contended in the counter that the canteen is being run by the management

and the food is being prepared by the employees of the 1st respondent. It is only for the distribution of food stuff to the employees of the 1st

respondent working at the work spots at the plant/shift level that the members of the petitioner-Union are engaged by the contractor. The

management denied the employer and employee relationship between it and the members of the petitioner-Union and claimed that the members of

the petitioner-Union are engaged by the private contractor. It is also claimed that under the provisions of the Factories Act, there is no prohibition

in running the canteen through contractors. It was also contended that food stuffs such as idli, puri, vada, etc., were alone being served and not any

lunch or dinner.

5. The learned single Judge, on appreciation of the pleadings of the parties and also the documents placed before him, held that the employees

were engaged by the contractor in the distribution of food stuffs and they are not entitled for regularisation of their services. The learned single

Judge opined that there is serious factual controversy with regard to the question whether the members of the petitioner-Union are the employees

of the 1st respondent-Corporation or the employees of the contractor. In conclusion, the learned single Judge has held that the petitioner-Union is

not entitled to the relief of regularization sought in the writ petition. The learned single Judge held that the members of the petitioner-Union are not

entitled for any relief. Having held so, the learned single Judge, however, directed,--

...However, as the members of the petitioner-Union are being continuously engaged for more than ten years, the 1st respondent is directed that

even though the work of distribution of food stuffs is being entrusted to a contractor, the said work may be entrusted with a condition that the

contractor shall engage the services of the members of the petitioner-Union, who are working at the 1st respondent factory for the last more than a

decade.

6. Hence these writ appeals by the Management as well as by the petitioner-Union assailing the validity of the order of the learned single Judge.

7. We have heard the learned Counsel for the parties and perused the order impugned in the writ appeals. At threshold, it needs to be emphasised

that the basic question whether the members of the petitioner-Union could be regarded as canteen employees of the 1st respondent or they are

employees under the contractor is undoubtedly a pure question of fact and any finding that may be recorded on such factual question should be

based on substantive legal evidence. The above question, being an incidence of fact, in normal course, should be resolved effectively and

conclusively by initiating adjudication before the fact-finding authorities like the Industrial Courts or the civil Courts. Normally this Court, while

exercising jurisdiction under Article 226 of the Constitution would not take up adjudication of disputed questions of fact only in a case where there

are no factual controversies and the question before the Court falls within the domain of law, this Court can grant reliefs on the basis of the

established facts, Article 226 is essentially meant to enforce the established rights and not to establish rights. After perusing the averments in the

affidavit filed in support of the writ petition and also the counter-affidavit filed by the management of the 1st respondent, we find serious factual

controversy with regard to the question whether the members of the petitioner-Union could be regarded as canteen workers under the

management of the 1st respondent or they are only contract labour employed by the independent contractor. The High Court cannot be converted

into a fact-finding body to resolve the factual controversies.

8. In that view of the matter and keeping in mind the interests of both the parties, we think that the dispute brought before this Court is fit to be

adjudicated upon by the Industrial Court. In that view of the matter, we dismiss W.A. No.559 of 2000 and allow W.A. No. 1267 of 2000 and the

order of the learned single Judge dated 25.4.2000 made in W.P. No. 6851 of 1998 is set aside and the writ petition is dismissed with no order as

to costs, however, reserving liberty to the writ petitioner-Union to work out alternative legal remedies, if it is so advised.

9. Before parting with the case, it is necessary to record a development brought to our notice, Mr. C.R. Sridharan, learned Counsel for the 1st

respondent-Management told us that the 1st respondent-Corporation, on becoming sick, was referred to Board for Industrial and Financial

Reconstruction under the BIFR Act and the BIFR and the AAIFR explored the possibility of reviving the industry and having attempted it, they

could not find any viable offer, and accordingly they have recommended to the Company Court to wind up the Corporation and in the order of the

AAIFR, it is recorded that the 1st respondent-Corporation was closed with effect from 1-4-1999. Therefore, the petitioner-Union has to work

out legal remedies, if any, in the light of the above development. We also make it clear that any of the observations made herein above or the

observations made by the learned single Judge in the order impugned in the writ appeals shall not, in any way, influence the decision making in the

event of the petitioner-Union pursuing other alternative legal remedies.