

Supreme Court of India

Government Of India vs Workmen Of State Trading ... on 19 March, 1997

Equivalent citations: AIR 1999 SC 1532, (1998) ILLJ 40 SC, (1997) 11 SCC 641

Bench: A Ahmadi, K Paripoornan, S Kurdukar

ORDER

1. Special leave granted.

2. This appeal by the Government of India in the Ministry of Commerce is directed against the order passed by the learned single Judge of the High Court of Madras in Writ Petition No. 3949 of 1990 whereby he directed that the employees of the Leather Garment unit of the State Trading Corporation, whose services were terminated on the closure of the unit, shall be continued in service by the Government of India (respondent No. 3 in the writ petition) on the same terms and conditions either in the Government Department or in the Government Corporations within three months. In passing this order, the learned single Judge based his decision on this Court's order in *G. Govinda Rajulu v. Andhra Pradesh State Construction Corporation Limited*, 1986 (Supp) SCC 651, in which this Court made a brief order in these terms:

1. We have carefully considered the matter and after hearing learned Counsel for the parties, we directed that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government department or in the government corporations.

2. The writ petition is disposed of accordingly. There is no order as to costs.

3. This order of the learned single Judge came to be affirmed by the Division Bench of the High Court.

4. The learned Additional Solicitor General appearing on behalf of the Government of India contended that the Leather Garment unit was an establishment of the State Trading Corporation and the workmen were employed by that Corporation and not by the Government of India and, therefore, the workmen of the State Trading Corporation could not claim employment with the Government of India or in any Corporation or Undertaking of the Government of India. It was contended by the third respondent-Government of India that it was for the State Trading Corporation to deal with the problem of non-employment of the petitioners and not the Government of India. These contentions are borne out from paragraph 5 of the Judgment of the learned single Judge. Paragraph 6 of the Judgment shows that the High Court without deciding on the question whether any such direction could be issued against the Government of India proceeded to conclude the matter on the basis of the aforementioned decision of this Court. The decision of this Court is virtually a non-speaking order which does not set out the facts and the circumstances in which the direction came to be issued against the Government. It is not clear as to what was the connection between the respondent-Corporation and the State Government. In the present case the Government of India had clearly averred that it had nothing to do with the State Trading

Corporation and there was no relationship of master and servant between the petitioners and the Government of India and, therefore, the Government of India was not in any manner concerned with the closure of the Leather Garment unit of the State Trading Corporation and the consequences thereof. Mr. Usgaonkar rightly emphasised that the decision on which the High Court had relied could not be treated as a precedent and in support of this contention he drew our attention to a Constitution Bench Judgment in the case of Krishena Kumar v. Union of India . In paragraphs 18 and 19 of the Law Report, the question as to when a decision can have binding effect has been dealt with. We need say no more as it is obvious from the decision relied on that it does not set out the facts or the reason for the conclusion or direction given. It can, therefore, not be treated as a binding precedent.

5. In the absence of any relation having been established of master and servant between the Government of India and the employees it is obvious that no such direction could have been given to the Government of India. We are, therefore, of the opinion that the High Court was wrong in directing the Government of India to employ the 28 workmen, who were the erstwhile employees of the Leather Garment unit of 'the State Trading Corporation.

6. An attempt was made by the learned Counsel for the Workmen to submit that the provisions of Section 25O of the Industrial Disputes Act, 1947 had not been complied with. There are two difficulties in her (the) way. The first is that the High Court has not issued any direction, whatsoever, so far as the State Trading Corporation is concerned. The direction is limited to the Government of India only. No appeal has been filed against the judgment of the High Court for not issuing any direction or granting any relief so far as the State Trading Corporation is concerned. The second difficulty is that according to the State Trading Corporation, Section 25O falls in Chapter VB of the Industrial Disputes Act and Section 25K states that the provisions of this Chapter shall apply to an industrial establishment in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. In the instant case, we find that the strength of the workmen employed in the unit is not shown to be above one hundred. On the contrary, it is shown to be 28 only. Therefore, Section 25O may not come into play. Counsel for the State Trading Corporation also stated that notwithstanding the same, the workmen, had been paid compensation under Section 25FFF. Counsel for the workmen stated that some of them have not accepted the compensation. That is a different matter altogether. If the compensation has been offered and not accepted, one cannot find fault with the employer. We also find that the High Court did not record any finding on this question. In fact, the State Trading Corporation had objected to the High Court entertaining the writ petition on the ground that, it involved several questions of fact. But since the High Court limited its direction to the Government of India, it proceeded to entertain the writ petition and disposed it of as above.

7. As we have come to the conclusion that the High Court was not justified in issuing the direction to the Government of India, one cannot allow the impugned judgment of the High Court to stand.

8. In the result we allow this appeal, set aside the judgments of the learned single Judge as well as the Division Bench with no order as to costs throughout.