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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

....

Registration T.A. No. 1892 of 1987

Indian Council of Agricultural
Research, New Delhi and another
... ... Petitioners

versus

Assistant Labour Commissioner(C)
Kanpur and another ... . Respondents

Hon'ble D.K. Agrawal, J.M.

Hon'ble K. Obayya, A.M.

(By Hon'ble D.K. Agrawal, J.M.)

Civil Misc. Writ petition No. 18719 of 1985 filed in the High Court of Judicature at Allahabad received on transfer under section 29 of Administrative Tribunals Act, 1985, was registered as T.A. No.1892 of 1987 as indicated above.

2. Briefly, the facts are that the workmen union of Central Institute of Horticultural Research for Northern Plains, Lucknow (hereinafter referred to as C.I.H.N.P.) raised an industrial dispute before Assistant Labour Commissioner (Central) Kanpur, in regard to regularisation of 106 workers engaged in the said organisation for last 9 years or so, by means of an application dated 21-4-1985. The C.I.H.N.P. Lucknow, filed its reply on 5-6-1985 and authorised its Administrative Officer, namely, Shri S.C. Soni to represent the employer before the Assistant Labour Commissioner on 6-6-1985 on which date a settlement was reached at between the workmen and

other employees and employer. The settlement dated 11-8-86 has been filed as Annexure-2 to the counter affidavit to illustrate that the employer has treated the Assistant Labour Commissioner (Central) as the authority for conciliation proceedings, even after the settlement in dispute dated 6-6-1985.

4. The Central Institute of Horticultural Research For Northern Plains, Lucknow is one of the Institutes established by the Indian Council For Agricultural Research (hereinafter referred to as I.C.A.R.). The I.C.A.R. is a society registered under the Societies Act, 1860, incorporated in or about the year 1970 with its Headquarters at the seat of the Government of India. The Minister in-charge of the Port Folio of Agriculture in the Union Cabinet is the President of the Society. Minister of State in the Union Ministry of Agriculture is the Vice President. The other Union Ministers and Members of Parliament or Secretaries to the Government of India etc. etc. are its other members as described in Rule 4 of " Rules and bye laws " of Indian Council For Agricultural Research Society. The object of the Society is to undertake, aid, promote and coordinate the research and education in the field of agriculture including animal husbandry in the country. The Society provides finances to research institutes/laboratories established in different parts of the country, one of which is situate at Lucknow and known as C.I.H.N.P.

5. The first question is as to whether the

Central Government is the appropriate authority within the meaning of section 2(a)(i) of Industrial Disputes Act, 1947. What is to be determined in this case is whether the activity carried on by C.I.H.N.P. is being carried on by or under the authority of the Central Government as provided in section 2(a) of the Industrial Disputes Act or not. Section 2(a) of the Act came up for consideration by Hon'ble Supreme Court in Heavy Engineering Mazdoor Union vs. State of Bihar, A.I.R. 1970 S.C. page 82. The Court has observed as follows in that case;" There being nothing to the contrary, the word 'authority' in Section 2(a) of the Act must be construed according to its ordinary meaning and therefore, must mean a legal power given by one person to another to do an act. The words 'under the authority of' were construed by this Court in that case as meaning pursuant to the authority, Such as, where an agent or a servant acts under or pursuant to the authority of his principal or master. Applying this test, the Court held that a manufacturing industry carried on by a company registered under the Companies Act was not being run under the authority of the Central Government even though the entire capital of the company had been contributed by the Central Government and under the Articles of Association of the company the Central Government could exercise control over the affairs of the company. The Court, however, proceeded to observe that the question whether a corporation is an agent of the State would depend upon the facts of each case. It referred to the decision in Graham v. Public Works Commr..(1901) 2 KB 781 and said that where a statute setting up a

Corporation so provided such a Corporation could be easily identified as the agent of the State and that it was possible for the Crown with the consent of Parliament to appoint or establish certain officials or bodies who were to be treated as agents of the Crown even though they had the power of contracting as principals. Merely because the officials of Government or certain bodies constituted by the Government for purposes of administration are given the garb of a statutory corporation they do not cease to be what they truly are."

6. The Supreme Court in the case of Heavy Engineering Mazdoor Union (supra) has also laid-down that an inference that the Corporation is the Agent of the Government may be drawn, where it is performing in substance governmental and not commercial functions. Therefore, the question whether a Corporation is an Agent of State, must depend on the facts of each case. In the case of Regional Provident Fund Commissioner Karnataka vs. Workmen represented by the General Secretary Karnataka Provident Fund Employees Union A.I.R. 1984 S.C. p. 1897, the Supreme Court held that the business of the Provident Fund Organisation is governmental in character and consequently laid-down that the 'appropriate authority' is the Central Government. The decision of Karnataka High Court otherwise was reversed. In the case of Hindustan Aeronautics Limited vs. Workmen and others, A.I.R. 1975 S.C. p. 1737, the Supreme Court held that in the absence of a statutory provision, however, a commercial Corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed

not to be a servant or Agent of the State. The fact that a Minister appoints the Members or Director of a Corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the Corporation, does not render the Corporation an Agent of the Government. Thus the touch stone for deciding the controversy is not the administrative or financial control of the Government. The prime question is as to whether the activity carried on by an industry is commercial or governmental in nature. In the present case I.C.A.R. is not a commercial Undertaking of Central Government. The object of the Society as mentioned in para 2 of the writ petition is to undertake, aid, promote and coordinate research and education in the field of agriculture including animal husbandry in the country. The aforesaid function is certainly a governmental function, thus, the conclusion is inevitable that the Central Government is the 'appropriate authority'. It also appears a fact that the I.C.A.R. has even on subsequent occasions entered into a settlement treating Central Government as the appropriate authority within the meaning of section 2(a)(i) of the Industrial Disputes Act. Annexure-2 to the counter affidavit referred to above is a clear example of the same, which is a settlement dated 11-8-86 reached between the workmen and I.C.A.R. before the Assistant Labour Commissioner (Central) Kanpur. Thus, in our

opinion, there is no manner of doubt that Central Government is the 'appropriate authority' in the instant case. Therefore, the settlement arrived at in the conciliation proceedings before the Assistant Labour Commissioner (Central) Kanpur was well within his jurisdiction.

7. The second point is as to whether Shri R.C. Soni, Administrative Officer was an authorised representative of the employer. In this regard, what is important is that, there is no dispute that Shri R.C. Soni, Administrative Officer, was representing the employer before the conciliation authority on 6-6-85. The Industrial Disputes Act only provides, representation of parties before the authority under the Act. A settlement arrived at in conciliation proceedings between the management and workmen would be binding on all, those who are parties to the disputes, even if not represented as provided under section 36(1) of the Industrial Disputes Act. The Industrial Disputes Act is a special statute providing for conciliation proceedings and its consequences. Once the employer has notice of the conciliation proceedings and it deputes a person to appear and represent him before such an authority, it does not lie in its mouth to say that the representative was vested with limited powers. It may be noticed that once an award or settlement is reached at, it subsists till replaced by a new award or settlement as observed by Supreme Court as follows in the case of L.I.C. of India vs. D.J. Bahadur A.I.R. 1980 S.C. p.2181., " there are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed

as the period of operation. Thereafter, the award or settlement does not become nonest but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under Section 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination under S 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Court and of this court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract

is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end - order in society - can it commit functional harakiri by leaving a conflict situation to lawless void?

34. Now we will move on to the precedents on the point which have been summed up by Malhotra thus (1); (3) Effect of termination of award under Section 19 (6) on rights and obligations of parties. Termination of an award by either party under Section 19 (6) does not have the effect of extinguishing the rights flowing therefrom. The effect of termination of an award is only to prevent thereafter the enforcement of the obligation under it in the manner prescribed, but the rights and obligations which flow from it are not wiped out.Evidently, by the termination of an award, the contract of employment is not terminated. The obligations created by the award or contract could be altered by a fresh adjudication or fresh contract. "

8. In view of the above, the writ petition is premature. The employer had to exhaust its remedy under Industrial Disputes Act. The right course was to give notice under section 19(2) or (6) and pursue the remedy with the 'authority' under Industrial Disputes Act, 1947 for reaching at a fresh adjudication/ contract by negotiation or otherwise. However, the right course was not followed for reasons best known to the employer. By now the aggrieved workers have done job of permanent nature for about 15 years with C.I.H.N.P. without being regularised. Such a course in a welfare state supposed to be a model employer

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cannot be appreciated.

9. In the result we hold that the settlement dated 6-6-85 is a legally valid and enforceable contract between the workmen and the employer (C.I.H.N.P.). Therefore, the writ petition accordingly must fail. The writ petition is dismissed without any order as to costs.

MEMBER (A)

MEMBER(J) 7.3.91

(sns)
March 7th, 1991
Allahabad.