WORKMEN OF THE FOOD CORPORATION OF INDIA

v.

M/S. FOOD CORPORATION OF INDIA

February 28, 1985.

[D.A. DESAI, V. BALAKRISHNA ERADI AND V. KHALID. JJ.]

Industrial Disputes Act, 1947, sec. 9A—Contract System abolished—Introduction of direct payment system effect of—Whether reintroduction of contract system amounts to discharge, termination of service or retrenchment of workmen—Whether notice u/s. 9A is a condition precedent to such change—Effect of non-issuance of such notice.

There were 464 workmen designated as handling Mazdoors for handling foodgrains at Siliguri Depot set up by the respondent-Food Corporation of India in West Bengal. Prior to January 2, 1973, the work of handling foodgrains at the said depot was entrusted by the respondent to a contractor who used to engage workmen and the workmen received their salaries or wages or remuneration from the contractor as determined by the contractor or as agreed between the Contractor and the workmen. The respondent introduced direct payment system with effect from January 2, 1973 pursuant to an agreement arrived at between the parties and the intermediary contractor disappeared from the picture. The method adopted was that the bills for the piece rate wages payable to handling Mazdoors were prepared by the Depot staff. The work rendered by each workmen had to be entered into a muster roll register. The respondent-Corporation distributed the wages calculated on piece rate to each workman through Sardars/Mondals and each workman was required to be a party to the acquittance roll to be retained by the respondent. The Sardars/Mondals used to accept payment and sign bills on behalf of the aforesaid workmen. The respondent changed this method of direct payment with effect from March 10, 1975 superseding the direct payment system and reintroducing contractor system and that too without giving any notice of change to the Workmen's Union-appellant herein as contemplated by section 9(A) of the Industrial Disputes Act 1947 (I.D. Act, for short). Consequently the respondent discontinued employment of the aforesaid 464 workmen and brought in the intermediary contractor and treated the workmen as the workmen employed by the contractor. The appellant-Union raised an industrial dispute as to whether the discontinuance of employment of 464 workers of their Silliguri Depot w.e.f. 21st July 1974 by the respondent is lawful and justified and the same was referred to the tribunal which negatived the claim of the appellant-union and held that the discontinuance of contractor system in the year 1973 and

A introduction a direct payment system did not bring about any change in the status of the workmen and therefore they never became the workmen of the respondent-Corporation. As a corrollary, it further held that reintroduction of the contractor system in 1975 did not constitute discontinuance of the services of the affected workmen. Hence this appeal by special leave.

B The appellant-Union contended (i) that even though the workmen were initially engaged by the contractor when the work of handling food-grains brought to Silliguri Depot was entrusted to a contractor, but subsequently at least from April 1973, the intermediary contractor was removed and they became the workmen directly employed by the Corporation and were therefore, the workmen of the respondent; and unless their services were legally terminated, they cannot be discontinued from service of the Corporation and some other master imposed upon them. (ii) that apart C from being an unfair labour practice, the changeover was illegal and vindictive and malicious in character and that the respondent was legally bound to give a notice of the said change to the Union as contemplated u/s. 9A of the I.D. Act. On the other hand, the respondent-Corporation argued (i) that even when the so called direct payment system was introduced after removing the contractor, it was basically a spill over of the old contract system save and except that the contractor was replaced by Sardars/Mondals D to whom total payment on piece rate was made and who distributed the wages to the individual workmen, the rate of payment remaining the same as was in vogue at the time the contractor handled the work and therefore at no point of time, the concerned workman ever became the direct workmen of the Corporation and no question of giving a notice of change arose as required by section 9(A) of the I.D. Act.

E Allowing the appeal,

HELD : (1) 'Workmen' has been defined in the Industrial disputes Act to mean 'any person (including an apprentice) employed in any industry to do.....". The expression 'employed has at least two known connotations but as used in the definition, the context would indicate that it is F used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, G an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the term as contained in the I.D. Act. [1075F-H; 1076A-B]

Dharangadhara Chemical Works Ltd. v. *State of Saurashtra*, [1957] H SCR 152; referred to.

(2) No employer since the introduction of the I.D. Act, 1947 and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the I.D. Act, 1947 would be void. It is not necessary to call in aid precedents to substantiate this too obvious and well-established proposition. Section 9A also makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice.

[1080B-C; 1082H; 1083A-B]

3(i) It is nowhere suggested that Sardars/Mondals were contractors. They were merely the agents of the Corporation for distributing the salary/wages earned by each workman as set out in the register to be maintained in respect of each workman by his name and the wages earned by him at the piece rate. Once the rate remained unchanged even after the removal of the contractor, the qualitative change in the position of workmen consequently would be, that the workmen's earnings at piece rate accelerated upward because the contractor's commission whatever he retained unto himself became available to the workmen and they benefitted. Therefore, the abolition of the contract system and the introduction of direct payment system brought about a basic qualitative change in the relationship between the Corporation and the workmen engaged for handling foodgrains in that on the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the contractor and the workmen. [1078D-G]

3(ii) Moreover, it was obligatory for the Corporation to arrange for handling the bags of foodgrains. The workmen handled the foodgrains for the Corporation and none else. For this service rendered, the Corporation agreed to pay and paid wages at piece rate to each workman whose name appeared in the register to be maintained for the purpose as per the directions given by the District Manager. If the pay packets were actually distaibuted by Sardars/Mondals, they can be said to be doing clerical work on behalf of the Corporation in the same manner as a clerk in the Accounts Department prepares and distributes pay packets for each employee of the Corporation month to month. If the clerk cannot be said to be the emloyer, *ipso facto* the Sardars/Mondals could not be clothed with the status of the replaced contractor. The intermediary screen having disappeared, the direct relationship came into existence and the conclusion is inescapable that since the introduction of the direct payment system, the workmen became the workmen of the Corporation and a direct master servant relationship came into existence. [1079A-C]

3(iii) The finding of the tribunal when it observed something contrary to record that the contractor system was not discontinued but it

A was really snatched away by the Mazdoors from the contractor apart from being perverse is contrary to record and overlooks two important letters dated January 18, 1973 and April 28, 1977 by which the Union and the Managing Director respectively affirmed the voluntary settlement arrived at between the parties, both for abolishing the contract system and introducing the direct payment system. The Tribunal feel into a serious error in overlooking relevant evidence and drawing surmises contrary to the B record. Tnerefore, the award of the Tribunal rejecting the reference and denying the benefit must be quashed and set aside and an award be made that the aforementioned 464 workmen who had become the workmen of the Corporation continued to be the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation. [1079D-E; 1083G-H]

C

(4) When workmen working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer namely, the contractor. If the termination of D service by the first employer is contrary to the well established legal position the effect of the employment by the second employer is wholly irrelevant. No attempt was made to justify the termination of service of the aforementioned workers of the Corporation by the subtle device of introducing a contractor so as to bring about a cessation of contract of employment between the workmen and the Corporation and a fresh contract of employment between the workmen and the contractor. If what was intended to E be done was retrenchment, *ex facie* the action is contrary to the provisions of Sec. 25F of the I.D. Act, 1947. Viewed from either angle, the action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and *ab initio* void and such action would not alter, change or have any effect on the status of the afore-mentioned 464 workmen who have become the workmen of the Corporation. [1080C-F]

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(5) If the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification Control and Appeal) Rules or the Indian Railway G Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation of the employer wanted to introduce a change in respect of any of the matters H set out in Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides : 'wages, including the period and

mode of payment'. By cancelling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31 (2) of the I.D. Act, 1947. Such a chance which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective. [1083C-F]

(6) The Food Corporation of India was set up under the Food Corporations Act 1964. The scheme of the Food Corporations Act would not permit the Corporation an instrumentality of the State, to act in a manner thoroughly arbitrary by first keeping a contractor, removing him and reinducting him without a semblance of consideration for the fate of the working for it or for its benefit or for some work connected with the functions of the Corporation. Therefore, the scheme of the Act has hardly any relavance save and except that its action is likely to be struck down as arbitrary being violative of Art. 14, but it is not necessary to go so far because the relief under the Industrial Disputes Act is readily available to the workmen. While the trend is in the direction of abolition of contract labour, this public sector undertaking appears to be completely oblivious to the trend and the pace-setter as enacted by the Parliament in the Contract Labour (Regulation and Abolition) Act, 1970. The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The Corporation attempted by its action to reverse that trend which does not credit to it. Where the law helps, such anti-labour practices must be thwarted or nipped in the bud. [1081G-H;1082C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1055 (NL) of 1981.

From the Award of Central Government Industrial Tribunal, Calcutta dated 29 8.1980 in Reference No. 13 of 1977 dated 27.9.1980.

T.S. Krishnamurthi, *S.K. Nandy* and *C.S. Vaidyanathan*, for the Appellants.

S.N. Kacker, *S. Chatterjee* and *A.K. Panda*, for the Respondents.

The judgment of the Court was delivered by

DESAI, J. Vacillation on the part of a public sector undertaking has pushed this trivial dispute to the Apex Court adding to the anxiety and misery on the part of lowest grade workmen and wasteful expenditure on futile litigation.

A Food Corporation of India ('Corporation' for short) was set up under an Act of Parliament being the Food Corporations Act, 1964 ('Act' for short) to provide, amongst other, for the establishment of Food Corporations for the purpose of trading in food-grains and other food-stuffs and for matters connected therewith and incidental thereto. For performance of the func-
B tions statutorily prescribed under Sec. 13 of the Act namely, to undertake the purchase, storage, movement, transport, distribution and sale of foodgrains and other foodstuffs, the Corporation has to set up godowns/depots and other storage facilities and to engage labour for handling foodgrains at the
C godowns or in transit. The Corporation adopted different methods at different places for employing labour for handling foodgrains. One such depot has been setup by the Corporation at Siliguri in West Bengal State. Number of workmen designated as handling Mazdoor were employed at Siliguri Depot. At the relevant time, 464 workmen were attached to this depot. It
D appears initially a contractor was engaged by the Corporation for handling storage and transit of foodgrains at Siliguri Depot. Subsequently, by negotiations and settlements, the contract system was abolished and the workmen were directly paid the wages, presumably at piece rate for the service rendered by them by the Corporation. A further attempt was made to bring about a
E basic change in the system by reinducting the intermediary contractor. This attempt to change the status of the workmen from being workmen of the Corporation to becoming the labour employed by the contractor was resisted by 'Food Corporation of India Workers' Union —appellant herein—('Union' for short) and it led to negotiations between the Corporation and the Union
F resulting in a settlement as evidenced by Union's letter dated January 18, 1973. Two terms of the settlement may be noticed here. They read as under :

> "(i) the FCI management agrees to take a final decision by 1.4.73 on the demand of the Union for departmentalisation of the workers working in the
G Corporations' permanent owned large-size godowns, where work goes on all the year round in West Bengal, Bihar, Orissa, Assam and New Delhi.
>
> (ii) .....
>
> H (iii) .....

(iv) In the meantime the Food Corporation of India management agrees to introduce the direct payment system to the workers working in their owned godowns as also in the hired godowns at the same stations at which this system is introduced for the owned godowns in the aforesaid States.

.....

The payment to the workers will be made at the rates at which the contractors are being paid now".

These terms of settlement have been set out in the aforementioned letter of the Union. The Managing Director in his reply dated January 20, 1973 confirmed the decision taken as indicated in the letter under reply. It would thus appear that the negotiations ended in a settlement. The Corporation addressed communication No. A-50(38)/72-Labour dated April 28, 1973 to its various Regional Managers in the aforementioned five States pointing out therein that the procedure in respect of direct payment to labourers laid down in the communication shall be followed. The method adopted is that the bills for the piece rate wages payable to handling Mazdoors should be prepared by the Depot Staff, and the Sardar/Mondal would accept payment and sign bills on their behalf and distribute the wages to the handling labour. A copy of this letter was also sent to the Joint Secretary of the Union. By the letter dated October 29, 1973 of the District Manager of the Corporation at Siliguri addressed to the Joint Secretary of the Union, the Union was informed to advise the local representatives of the workmen 'to submit the wage bill in time in which particulars of per head out turn by name' was required to be mentioned. The expression 'per head out turn' means the quantum of work rendered by each workman with his name so that his wage at piece rate can be calculated and paid to him. This system of payment was being implemented and was in vogue, till January 27, 1975. On account of some other industrial dispute, the members of the Union who were workmen attached to Siliguri Depot went on strike on and from January 28, 1975. This strike was called off on March 9, 1975. The usual management response followed and effective from March 10, 1975 the Corporation changed the method of payment superseding the direct payment system and reintroducing contractor system and that too without giving any

notice of change as contemplated by Sec. 9A of the Industrial Disputes Act, 1947 ('I.D. Act' for short). As a direct consequence of this change, the Corporation discontinued employment of 464 workmen attached to Siliguri Depot and brought in the intermediary contractor and treated the afore-mentioned workmen as the workmen employed by the contractor. The Union protested against this illegal action alleging that apart from being an unfair labour practice, the changeover was illegal and vindictive and malacious in charactor. According to the Union these 464 workmen were already accepted as the workmen of the Corporation and unless their services were legally terminated, they cannot be discontinued from service of the Corporation and some other master imposed upon them.

An industrial dispute in this behalf raised by the Union was referred by the Central Government to the Central Government Industrial Tribunal, Calcutta under Sec. 10 of the I.D. Act for adjudication. The reference was in the following terms :

> "Whether the discontinuance of employment of 464 workers of their Siliguri Depot with effect from 21-7-75 by the management of Food Corporation of India is lawful and justified ? If not, to what relief are the workers entitled ?"

The Corporation contested the reference inter alia contending that ordinarily the handling of foodgrains at varions depots was entrusted to a contractor who employs his own workmen and that this system of employing the contractor was unavoidable because the receipt and distribution of foodgrains at various depots is not a continuous process but solely depends upon the transport system and work is of a fluctuating nature. It was admitted that direct payment system was introduced at Siliguri Depot and the contractors were replaced by workers working under their Sardars and they were never accepted as direct workmen of the Corporations. It was contended that the Sardars replaced the contractor but the system remains the same and that the workers were paid the same rate as were paid to the contractors and at no point of time the workmen ever became the direct workmen of the Corporation. A reference to the strike of the workmen at the Siliguri Depot was made in the written statement and it was stated that the strike was not called

off by the workmen unanimously but it had to be discontinued on account of prohibitory order made by the appropriate Government while exercising its power to make a reference of the existing industrial dispute under Sec. 10 of the I.D. Act for adjudication. It was contended that Sec. 9-A of the I.D. Act is not attracted because there was no change which necessitated a notice. The allegations of victimisation and unfair labour practice were denied.

The rival contentions and the nature of reference necessitated a decision on the question : whether the workmen represented by the union and attached to Siliguri Depot were or had become at any point of time the workmen of the Corporation and whether an illegal change made with regard to their conditions of service by the Corporation ?

Chapter II-A was introduced in the Industrial Disputes Act, 1947 by Sec. 6 of the Amending Act 36 of 1956 which came into force on March 10, 1957. Sec. 9A imposed an obligation on the employer to give a notice of change, if he proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule. Item No. 1 in the Fourth Schedule reads : 'wages, including the period and mode of payment'. Thus if mode of payment in vogue is sought to be changed by the employer, Sec. 9A imposes an obligation to give a notice of change to the workmen likely to be affected by such change in the prescribed manner cogently setting out the nature of the change proposed to be effected. Any change effected without following the procedure prescribed in Sec. 9A will be punishable under Sec. 31(2 of the I.D. Act.

The dispute between the parties revolves round the status of 464 workmen whose discontinuance from employment resulted in the industrial dispute which was referred for adjudication. In short the dispute is : whether the workmen covered by the reference were the workmen of the Corporation or employed by the contractor and were therefore, the workmen of the contractor ? The Union contends that even though the workmen were initially engaged by the contractor when the work of handling foodgrains brought to Siliguri Depot was entrusted to a contractor but subsequently at least from April, 1973, the intermediary contractor

A was removed and they became the workmen directly employed by the Corporation and were therefore, the workmen of the Corporation. On the other hand, the Corporation contends that the work of handling foodgrains at Siliguri Depot was always entrusted to a contractor because the work is of a fluctuating and intermitent nature and therefore, it was not possible to B have regular work force for handling the same. According to the Corporation, even when the so-called direct payment system was introduced after removing the contractor, it was basically a spill over of the old contract system save and except that the conractor was replaced by Sardars/Mondals to whom total payment on C piece rate was made and who distributed the wages to the individual workman, the rate of payment remaining the same as was in vogue at the time the contractor handled the work. It was therefore, submitted on behalf of the Corporation that at no point of time, the concerned workmen ever became the direct workmen of the Corporation and therefore, no question of giving D a notice of change arose as required by Sec. 9A of the I.D. Act.

The Tribunal held that initially there was a contractor engaged to undertake handling of foodgrains. The contractor engaged the workmen for handling the foodgrains. It was however, held that prior to the introduction of 'direct payment system' E in January 1973 at no point of time the handling of foodgrains which means loading and unloading from wagons, trucks and then storing and stacking in the godowns, was ever undertaken by the Corporation and always the work was entrusted to a contractor who engaged his own workmen. The Tribunal accepted the contention of the Union that since January 2, 1973, the F contractor system was discontinued and what is called the direct payment system was introduced. The Tribunal however proceeded to observe that this did not bring about any change in the status of the workmen and therefore, they never became the workmen of the Corporation. As a corollary, the Tribunal held that reintroduction of the contractor system in 1975 did not G constitute discontinuance of the services of the affected workmen. In accordance with these findings, the Tribunal negatived the claim of the workmen and made the award to that effect. Hence this appeal by special leave.

H The first and the foremost question is : what is the effect of the introduction of direct payment system from January 2,

1973 on the status of the workmen involved in the reference ? The Tribunal proceeded to examine the evidence about the existence of contractor system prior to January, 1973. That is hardly relevant. Parties are agreed that prior to January 2, 1973 the work of handling foodgrains at Siliguri Depot was entrusted by the Corporation to a contractor and the contractor engaged the workmen and the workmen received their salaries or wages or remuneration from the contractor as determined by the contractor or as agreed between the coutractor and the workmen and therefore, the workmen were not the workmen of the Corporation. It is merely adding to the length of the judgment to examine evidence in respect of an admitted position. Correct approach is to accept this uncontroverted finding of the Tribunal.

It is not in dispute that since January 2, 1973 direct payment system was introduced. What does this direct payment system imply ? Has it any impact on the relation between the Corporation and the workmen to whom by the change introducing direct payment system, the Corporation removed the contractor, took work from the workmen and agreed to pay each workman by name on piece rate basis according to his out-turn work ? Has it any bearing on the issue involved in the dispute, namely, on the status of the workmen ?

Briefly stated, when Corporation engaged a contractor for handling foodgrains at Siliguri Depot, the Corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract or employer and workmen between the Corporation and the workmen. 'Workman' has been defined (omitting the words not necessary) in the Industrial disputes Act to mean 'any person (including an apprentice) employed in any industry to do.....'. The expression employed has at least two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in case or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed

A to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the term as contained in the B Act. (*Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*[1]). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the contract system was in vogue, the workmen C employed by the contractor were certainly not the workmen of the Corporation and no claim to that effect has been made by the Union.

On January 2, 1973 pursuant to the agreement arrived at between the parties evidenced by the letter dated January 18, 1973, D the parties agreed to introduce and did introduce the direct payment system to workmen working in the godowns owned by or hired by the Corporation. Introduction of this system is confirmed by the letter dated January 20, 1973 and was not disputed before us. What constitutes direct payment system becomes clear from the letter dated April 28, 1977 addressed by the Corporation to all its Regio- E nal Managers working at Calcutta, Patna, Gauhati and Bhubaneswar. As this has a direct bearing on the understanding of the concept of direct payment in contra-distinction to the earlier prevailing system of engaging contractor and in supersession of it, the same may be reproduced in extenso. Says the letter :

F

> "The procedure in respect of direct payment to labourers laid down as under should be followed strictly :—
>
> (1) The bills would be prepared by the Depot Staff.
>
> (2) The Labour should authorise their Sardar/Mondal to G accept payment and sign bills on their behalf and give acquittance.
>
> (3) The authorised Sardars/Mondals may then receive the money after giving acquittance.

H (1) [1957] SCR 153

(4) The bill with acquittance in original should be with FCI". A

Further amplifying this method, the Corporation by its letter dated October 22, 1973, directed as under :

"I have been directed by Zonal Manager (East) that the payment to be made to the workers directly by us after the Direct Payment System. B

You are therefore, requested to advise your local representatives to submit the bill in time in which particulars of per head out-turn by name should be mentioned, so that we do not feel any difficulty to pass the bill and to pay the workers in time. If formalities as directed by Zonal Manager are not observed we will not be able to pay the workers from next fortnight." C D

Examining the system of direct payment as setout in the letter dated April 28, 1973 further amplified by the letter dated October 29, 1973, it becomes crystal clear that name of every workman engaged to handle foodgrains at Siliguri Depot will be mustered in a register and his daily out-turn will be specified. The payment will be by piece rate as was in vogue at the time of contractor system. The bill will be prepared setting out the names of the E workmen and the out-turn of each. The pay bill will be prepared by the Depot staff who are regular employees of the Corporation. The payment will be made by the Corporation but will be distributed to each workman according to the piece rate by whatare called Sardar/Mondal. The bill with the acquittance in original evidencing payment would be filed with the Corporation. It must F at once be made clear that a salary or wages of a workman in an industrial undertaking can be monthly rated which requires the workmen to render service daily for specified number of hours but the rate per month is fixed. It can be piece rate corelated to daily production with an obligation to render service daily for specified number of hours, the monthly wage bill being worked out accor- G ding to production. Both the systems are known to be in vogue in industrial employment. When the contractor system was in vogue, the contractor was being paid in lump sum arrived at by multiplying the rate per bag to total number of bags. What number of workmen and for what length of time they were to be engaged for doing the H

handling work was left to the discretion of the contractor. The Corporation had nothing to do how many workmen were employed nor the rate or method of payment by the contractor to the labour force employed by him. Corporation was solely concerned with the number of bags handled by the contractor. It was not a contract for supply of labour but it was specifically a contract for handling bags of foodgrains. When the direct payment system was introduced, the intermediary contractor disappeared from the picture. The work rendered by each workman had to be entered into a muster roll register. The Corporation will distribute the wages calulated on piece rate to each workman was required to be a party to the acquittance roll to be retained by the Corporation. The wages were distributed by Sardars/Mondals.

Can there be any doubt about the relationship between the Corporation and the workmen since the date of abolition of the contract system and introduction of direct payment system as discussed herein ? It is nowhere suggested that Sardars/Mondals were contractors. They were merely the agents of the Corporation for distributing the salary/wages earned by each workman as set out in the register to be maintained in respect of each workman by his name and the wages earned by him at the piece rate. Assuming as was contended by Mr. Kacker on behalf of the respondent-Corporation that once the rate remained unchanged even after the removal of the contractor, direct payment system does not bring about any qualitative change in the status of workmen, a fact that stares into the eye and the one that cannot be overlooked is that the contractor had not undertaken the contract obligation for some altruistic motives. He had done so for earning for profits. Now accepting what Mr. Kacker and Mr. Pai submitted that the rates remained unchanged the qualitative change in the position of workmen consequently would be, that the workmen's earnings at piece rate accelerated upward because the contractor's commission whatever he retained unto himself became available to the workmen and they benefitted. Therefore, the abolition of the contract system and the introduction of direct payment system hereinbefore discussed brought about a basic qualitative change in the relationship between the Corporation and the workmen engaged for handling foodgrains in that on the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the contractor and the workmen. To illustrate this point succinctly, let it be made clear that it was obligatory for the Corpo-

ration to arrange for handling the bags of foodgrains. The workmen handled the foodgrains for the Corporation and none else. For this service rendered, the Corporation agreed to pay and paid wages at piece rate to each workman whose name appeared in the register to be maintained for the purpose as per the directions given by the District Manager. If the pay packets were actually distributed by Sardars/Mondals, they can be said to be doing clerical work on behalf of the Corporation in the same manner as a clerk in the Accounts Department prepares and distributes pay packet for each employee of the Corporation month to month. If the clerk cannot be said to be the employer, *ipso facto* the Sardars/Mondals could not be clothed with the status of the replaced contractor. The intermediary screen having disappeared, the direct relationship came into existence and the conclusion is inescapable that since the introduction of the direct payment system, the workmen became the workmen of the Corporation and a direct master servant relationship came into existence.

The Tribunal fell into error when it failed to draw the logical and inescapable conclusion from the facts hereinbefore discussed and completely misdirected itself when it observed something contrary to record that 'the contractor system was not discontinued but it was really snatched away by the Mazdoors from the contractor'. The finding apart from being perverse is contrary to record and overlooks two important letters dated January 18, 1973 and April 28, 1977 by which the Union and the Managing Director respectively affirmed the voluntary settlement arrived at between the parties, both for abolishing the contract system and introducing the direct payment system. Therefore, the Tribunal fell into a serious error in overlooking relevant evidence and drawing surmises contrary to the record. Its finding, therefore, becomes unsustainable and cannot be upheld.

The next question to which we must address ourselves is whether once on the introduction of the direct payment system, the workmen acquired the status of the workmen of the Corporation, was it open to the Corporation to unilaterally discontinue the system without the consent of the workmen and reinduct contractor so as to again introduce a smoke-screen which may on paper effectively deny the status of being the workmen of the Corporation, acquired by these workmen. And on discontinuance of the system of direct payment, without ordering retrenchment of their services by the

Corporation, they obtained a fresh employment under the Contractor. Is it legally permissible ? The question provides its own correct and effective answer. No employer since the introduction of the I.D. Act, 1947 and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the I.D. Act, 1947 would be void. It is not necessary to call in aid precedents to substantiate this too obvious and well-established proposition. When workmen working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer namely, the contractor. If the termination of service by the first employer is contrary to the well-established legal position, the effect of the employment by the second employer is wholly irrelevant. No attempt was made to justify the termination of service of the afore-mentioned workers of the Corporation by the subtle device of introducing a contractor so as to bring about a cessation of contract of employment between the workmen and the Corporation and a fresh contract of employment between the workmen and the contractor. If what was intended to be done was retrenchment, *ex facie* the action is contrary to the provisions of Sec. 25F of the I.D. Act, 1947. Viewed from either angle, the action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and *ab initio* void and such action would not alter, charge or have any effect on the status of the afore-mentioned 464 workmen who had become the workmen of the Corporation.

Mr. Kacker and Mr. Pai, learned counsel on behalf of the Corporation urged that having regard to the functions for which the Food Corporation of India was set up under the Food Corporations Act, 1964, it can without incurring the liability of employing workmen where work is of an intermittant nature, employ a contractor for supply of labour or for handling certain works of the Corporation. Without in any way reflecting upon the bona fides of a public sector Corporation to engage a contractor for supply of labour treating it as a commodity, we may assume that the Corporation can

engage a contractor for supply of labour, the question is whether it has done so. The long title of the Act shows that the Act was enacted to provide for the establishment of Food Corporations for the purpose of trading in foodgrains and other foodstuffs and for matters connected therewith and incidental thereto. By Sec. 3 the Central Government was authorised to establish a Corporation to be known as the Food Corporation of India. Sec. 5 provides for the initial capital and for acquiring power to increase the capital in such manner as the Central Government or the State Government as the case may be may determine, initial capital being provided by Central Government. Sec. 7 provides for the constitution of the Board of Directors. The management of the Corporation is to vest in a Board of Directors and the Board of Directors in discharging its functions shall act amongst others according to the instructions on questions of policy as may be given by the Central Government. The annual net profit of the Food Corporation of India has to be paid to the Central Government (Sec. 33). Every Food Corporation has to submit to the Central Government an annual report of its working and affairs and the same has to be laid before the Houses of Parliament. Sec. 45 confers power on the food Corporation to make regulations not inconsistent with the Act and the rules mad thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Without prejudice to the generality of the power conferred by Sec. 45(1) the regulations must provide for, amongst others, the methods of appointment, the conditions of service and the scales of pay of the officers and employees of a Food Corporation other than the Secretary of the Food Corporation of India.

From the perusal of the scheme of the Act, it is undeniable that the Food Corporation of India is an instrumentality of the State comprehended in the expression 'other authority' in Art 12 of the Constitution and is subject amongst other things to Part III of the Constitution. If so, it must act fairly so as not to violate Art. 14 of the Constitution. Now we fail to understand how this scheme of the Act would permit the Corporation, an instrumentality of the State, to act in a manner thoroughly arbitrary by first keeping a contractor, removing him and reinducting him without a semblance of consideration for the fate of the workmen working for it or for its benefit or for some work connected with the functions of the Corporation. Therefore, the scheme of the Act has hardly any relevance save and except that its action is likely to be struck down

as arbitrary being violative of Art. 14, but it is not necessary to go so far because the relief under the Industrial Disputes Act is readily available to the workmen.

The submission that it was open to the Corporation to engage a contractor for handling of foodgrains may be true or legally acceptable ; the question, however, is whether once some workmen became the workmen of the Corporation as hereinbefore discussed, was it open to the Corporation to induct a contractor and treat its workmen as workmen of the contractor. The answer is in the negative, for the reasons hereinbefore discussed. The agony consequent upon such submission may be unmasked. While the trend is in the direction of abolition of contract labour, this public sector undertaking appears to be completely oblivious to the trend and the pace-setter as enacted by the Parliament in the Contract Labour (Regulation and Abolition) Act, 1970. An assertion in the Statement of Objects and Reasons accompanying the Bill, which was enacted into the law, may help the Corporation in freeing itself from the traditional master-servant relationship and help it in becoming an ideal employer where exploitation in any form is wholly eschewed. The statement reads as under :

> "The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service, conditions of contract labour where the abolition was not possible."

The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The proposed Bill aimed at abolition of contract labour in respect of such categories as may be notified. The Corporation attempted by its action to reverse that trend which does no credit to it. We say no more save and except saying that where the law helps, such anti-labour practices must be thwarted or nipped in the bud.

It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A

makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec. 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides : 'wages, including the period and mode of payment'. By cancelling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

In view of the discussion, this appeal has to be allowed and the award of the Tribunal rejecting the reference and denying the benefit must be quashed and set aside and an award be made that the aforementioned 464 workmen who had become the workmen of the Corporation continued to be the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obli-

A gations and duties as prescribed for the workmen by the Corporation. A formal award to that effect shall be made by the Tribunal.

As it was stated before this Court that these workmen continued to be employed, undoubtedly under the contractor since the illegal change was introduced, the question of paying backwages does not arise. The Tribunal, however, must satisfy itself before making the final award whether any workman was denied work and consequently wages. The Corporation shall pay costs quantified at Rs. 10,000 to the appellant-Union.

M.L.A. *Appeal allowed*