A

STATE OF RAJASTHAN

v.

SARJEET SINGH AND ANR.

OCTOBER 19, 2006

B

[S.B. SINHA AND DALVEER BHANDARI, JJ.]

Industrial Disputes Act, 1947:

ss. 2(oo)(bb), 25-G and 25-H—Termination of contract of employment—
C *Pump driver—Employed by Gram Panchayat for a fixed term and specific purpose under a Scheme funded equally by Gram Panchayat and State Government—On scheme coming to an end, services of worker terminated—Labour Court directing reinstatement with 30% back wages—Award affirmed by High Court—Held, Labour Court misdirected itself in holding that order*
D *of termination was in violation of ss. 25-G and 25-H— If Gram Panchayat was in Management of Scheme, employer would be Panchayat and not the State—Labour Court and High Court failed to consider this vital aspect—However, in exercise of jurisdiction under Article 142 of the Constitution, State directed to pay Rs.30,000/—to worker—Constitution of India—Article 142.*

E

A scheme, known as 'Jal Pradyot Yojna' was made for supply of water in the villages of Rajasthan. The State Government and the Gram Panchayat were to contribute equally towards its cost. The scheme was to be completed by 7.11.1997. The Gram Panchayat concerned employed respondent no. 1 as
F **pump driver under the said scheme, initially for a period of six months w.e.f. 19.9.1996. The term of his employment was extended from time to time till 7.11.1997 on which date the scheme came to an end and services of respondent no. 1 were terminated. Respondent no. 1 filed an application before the Labour Welfare and Conciliation Officer for his regularization. He later filed an application before the Industrial Court which passed an award of his**
G **reinstatement with continuity of service and 30% back wages holding that while terminating the services mandatory provisions of sections 25-G and 25-H of the Industrial Disputes Act, 1947 were not complied with. The State Government after unsuccessfully challenging the said award in a writ petition as also in an intra-court appeal before the High Court, filed the present appeal.**

H

Allowing the appeal, the Court A

HELD:1.1. Although the Labour Court possesses discretionary jurisdiction in moulding the relief in terms of Section 11-A of the Industrial Disputes Act, 1947, the power thereunder must be judicially exercised. In the instant case, respondent No. 1 was appointed under a Scheme for a specific purpose. The fact that his initial appointment was for a period of six months B is not disputed. The concept of there being 'dual employer' although may not be unknown in industrial jurisprudence but the Labour Court misdirected itself in holding that the termination of his services by the appellant was illegal being in violation of Sections 25-G and 25-H of the Act. If the Gram Panchayat was in management of the Scheme, the employer would be the Panchayat and C not the State. In fact, respondent No. 1 impleaded both of them as parties. The Labour Court and consequently the High Court failed to consider this vital aspect of the matter. [621-A-C]

Municipal Council, Samrala v. *Raj Kumar,* [2006] 3 SCC 81; *Municipal Council, Samrala* v. *Sukhwinder Kaur,* (2006) 7 SCALE 614 and *The Haryana* D *State Agricultural Marketing Board* v. *Subhash Chand & Anr.,* (2006) 2 SCALE 614, relied on.

S.M. Nilajkar & Ors. v. *Telecom District Manager, Karnataka,* [2003] 4 SCC 27, referred to.

E

1.2. Assuming that in terminating the services of respondent no. 1, violation of Section 25-G or 25-H of the Act occurred (although there is no factual basis therefor), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. [621-F]

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State of M..P. and Ors. v. *Arjunlal Rajak,* (2006) 2 SCALE 610, referred to.

2. Although the Court ordinarily would have set aside the impugned award and consequently the judgment of the High Court, but in exercise of G jurisdiction under Article 142 of the Constitution of India, the State is directed to pay a sum of Rs. 30, 000/- to respondent no. 1. [621-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4551 of 2006.

From the Judgment and final Order dated 2.5.2005 of the High Court of H

A Judicature for Rajasthan in at Jodhpur D.B. Civil Special Appel No. 154/2005.

Kumar Kartikey and Aruneshwar Gupta for the Appellant.

S.N. Trivedi, D.P. Mukherjee and Nandini Sen for the Respondents.

B The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

The State of Rajasthan made a Scheme for supply of water in the villages known as "Jal Pradyot Yojna". The State was to contribute 50% of C the total costs whereas the rest 50% was to be borne by the Gram Panchayat. Pursuant to or in furtherance of the Scheme, the Gram Panchayat of Indragarh employed several persons including Respondent No. 1 herein as a pump driver. He was initially appointed for a period of six months. The term of his appointment was extended from time to time. The total period during which Respondent No.1 remained employed was from 19.9.1996 to 7.11.1997. The D Scheme was to be completed upto 7.11.1997. As the Scheme came to an end, the services of Respondent No. 1 were terminated. He filed an application for his regularization of his services as a pump driver before the Labour Welfare and Conciliation Officer, Hanumagarh. In reply to the notice issued by the said authority, the Public Health & Engineering Department of the State inter E alia contended that Respondent No. 1 had never been appointed by it and in fact was appointed by the Sarpanch of the Gram Panchayat, Indragarh.

An industrial dispute was raised by Respondent No. 1 herein by filing an application before the Industrial Court. By an award dated 9.5.2002, it was held that while terminating the services of Respondent No. 1 herein, the F mandatory requirements of Sections 25-G and 25-H of the Industrial Disputes Act were not complied with and consequently an award of reinstatement with continuity of service was passed by the Labour Court. Respondent No. 1 herein, however, was declared to be entitled to only 30% of the back wages. The Labour Court while making the aforementioned award arrived at the following findings:

G

(i) Respondent No. 1 herein had worked for a period of 13 months and 18 days and the Gram Panchayat as well as the Department made payment of his wages.

(ii) He had worked for more than 240 days. As his services had been H terminated by a written notice, statutory provisions of Sections

25-G and 25-H of the Industrial Disputes Act had not been complied with. A

A writ petition filed by Appellant herein was dismissed by a learned Single Judge of the High Court opining :

> "It is not in dispute that the workman had worked for more than 240 days, as he had worked from 19.9.1996 to 7.11.1997. Learned counsel argued that the workman was appointed for a fixed term, and, therefore, his removal does not amount to retrenchment in view of the provisions of Section 2(oo)(bb) of the Industrial Disputes Act. However, learned counsel for the Petitioner could not point out any document whereby the requirements of Section 2(oo)(bb) may be established." B C

A Division Bench of the High Court in an intra-court appeal affirmed the said finding.

The Scheme for supplying water in the villages was a joint Scheme of the State of Rajasthan through Public Health and Engineering Department and the Gram Panchayat. There is nothing on records to show that Respondent No. 1 was appointed by the State. It is not in dispute that he was initially appointed for a period of six months and that too by the Sarpanch Gram Panchayat. Pursuant to or in furtherance of the Scheme, the Public Health and Engineering Department might have released payments of his salary but the same would not lead to the conclusion that the relationship of an employer and employee came into being. D E

Furthermore, Respondent No. 1 was appointed for a fixed period. His services might have continued but it appears that the same was to remain in force till the Scheme was completed. F

We may in the aforementioned backdrop notice the definition of 'retrenchment' as contained in Section 2(oo)(bb) of the Industrial Disputes Act, which is in the following terms:

> 2(oo) "Retrenchment" means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include - G
>
> *** *** ***
>
> "(bb) termination of the service of the workman as a result of the H

A non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;.."

It is a case which attracts clause (bb) of Section 2(oo) of the Industrial Disputes Act.

B

In *Municipal Council, Samrala* v. *Raj Kumar,* [2006] 3 SCC 81, it was held :

"The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of C employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant Municipal Act and/or the rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The D agenda in question was placed before the Executive Council with a view to obtain requisite direction from it wherefor the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services E of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council.

We have noticed hereinbefore that the respondent understood F that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so." G

The said decision has been followed by this Court in *Municipal Council, Samrala* v. *Sukhwinder Kaur,* (2006) 7 SCALE 614 wherein the offer of appointment to Respondent therein was in the following terms:

"Office of the Nagar Council, Samrala (Ludhiana) H

No.588 Dated : 06.11.1995 A

Office Order No.

On dated 6.11.1995 vide order dated 6.11.1995 you are appointed as clerk on the contract basis at the fixed rate of Rs. 1000/- per month as per the directions of the Government, it is purely temporary B appointment. No one will force against this post. Executive Officer has the powers to dismiss you without issuing any notice. All the terms and conditions issued by the office will be accepted by you.

Sd/- Executive Officer

C

Nagar Council, Samrala"

Such an offer of appointment was held to attract Section 2(oo)(bb) of the Act.

The learned counsel appearing on behalf of Respondent No. 1 placed D strong reliance on *S.M. Nilajkar & Ors.* v. *Telecom District Manager, Karnataka,* [2003] 4 SCC 27. The said decision was explained and held to have been applied in the fact situation obtaining therein by this Court in *Raj Kumar* (supra) stating:

"In the decision of this Court in *S.M. Nilajkar* v. *Telecom Distt.* E *Manager* whereupon the learned counsel for the respondent placed strong reliance, this Court was concerned with a different fact situation obtaining therein. In that case, a scheme for absorption of the employees who were appointed for digging, laying cables, erecting poles, drawing lines and other connected works was made which came F into force with effect from 1-10-1989, and only those whose names were not included for regularisation under the said scheme, raised disputes before the Assistant Labor Commissioner, Mangalore. The termination of the services of casual mazdoors by the management of Telecom District Manager, Belgaum, thus came to be questioned in the reference made by the appropriate Government in exercise of its power G conferred upon it under Section 10 of the Industrial Disputes Act. This Court, having regard to the contentions raised by the respondents that the appellant therein was engaged in a particular type of work, namely, digging, laying cables, erecting poles, drawing lines and other connected works in the project and expansion of the Telecom Office H

A in the district of Belgaum was of the opinion : (SCC p. 37, para 13)

"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :

B (i) that the workman was engaged in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

C (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of D employment."

Raj Kumar (supra) has also been followed by this Court in *The Haryana State Agricultural Marketing Board* v. *Subhash Chand & Anr.*, (2006) 2 SCALE 614 stating :

E "It is the contention of the appellant that the respondent was appointed during the 'wheat season' or 'paddy season'. It is also not in dispute that the appellant is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down terms and conditions of services of F the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services G on contract basis after a considerable period(s).

The question as to whether Chapter VA of the Act will apply or not would dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2(oo)(bb) of the Act or not. If the termination of service in view of the exception H contained in clauses (bb) of Section 2(oo) of the Act is not a

'retrenchment', the question of applicability of Chapter VA thereof would not arise." A

It is now well settled that although the Labour Court possesses discretionary jurisdiction in moulding the relief in terms of Section 11-A o the Industrial Disputes Act, the power thereunder must be judicially exercised. Respondent No. 1 herein was appointed under a Scheme. He was appointed B for a specific purpose. The fact that his initial appointment was for a period of six months is not disputed. The concept of there being 'dual employer' although may not be unknown in industrial jurisprudence but the Labour Court, in our opinion, misdirected itself in holding that the termination of his services by Appellant was illegal being in violation of Sections 25-G and 25-H of the Industrial Disputes Act. If the Gram Panchayat was in management C of the Scheme, the employer would be the Panchayat and not the State. In fact, Respondent No. 1 herein impleaded both of them as parties. The learned Labour Court and consequently the High Court failed to consider this vital aspect of the matter.

In *State of M..P. and Ors.* v. *Arjunlal Rajak,* (2006) 2 SCALE 610, this D Court opined:

"...It is, however, true that while terminating the services of the respondent the appellants had not complied with the mandatory requirements of Section 25F of the Industrial Disputes Act and, thus, E ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that a project or a Scheme or an office itself is abolished, relief by way of reinstatement is not granted."

In terminating the services of Respondent No. 1, we would assume that F violation of Sections 25-G or 25-H occurred (although there is no factual basis therefor), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. We, however, although ordinarily would have set aside the impugned award and consequently the judgment of the High Court, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the G State to pay a sum of Rs. 30,000/- to Respondent No. 1. Such payment should be made within eight weeks from date failing which the same shall carry interest at the rate of 9% per annum. The appeal is allowed with the aforesaid directions. The parties shall pay and bear their own costs.

R.P. Appeal allowed. H