

A G.M. TANDA THERMAL POWER PROJECT

v.
JAI PRAKASH SRIVASTAVA AND ANR.

OCTOBER 11, 2007

B [S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

C *Labour Laws—Appointment—On contractual basis—Against non-existing post By Land Acquisition Officer—For looking after land acquisition proceedings pertaining to land acquired for a Company—Salary to the employee paid by the Company—Termination of the employee—Industrial dispute alleging violation of provision of U.P. Industrial Disputes Act—Labour Court directing reinstatement on the ground that there existed relationship of employer and employee*
D *between the Company and the employee—High Court not interfering with the matter—On appeal, held: Services of the employee were required by the Land Acquisition Officer and not the Company—Hence there did not exist relationship of employer and employee between the employee and the Company—Order of reinstatement was wrong in*
E *view of appointment against a non-existing post and in view of the fact that appointment was on contractual basis—High Court should have determined the disputed question of relationship of employer and employee, in presence of all the interested parties ie. also Land Acquisition Officer—Uttar Pradesh Industrial Disputes Act.*

F *Constitution of India, 1950—Article 226—Judicial review—Labour matter—Interference with disputed question of fact—Permissibility—Held: When existence of the relationship of employer and employee is disputed, interference is permissible.*

G **State acquired land for the appellant-Company. Acquiring Authority engaged first respondent as a daily wager for a temporary period to look after the pending acquisition cases. The expenses thereof were borne by the appellant. After expiry of the period, his services were terminated. Respondent raised industrial dispute**

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challenging his termination. Labour Court held that there existed a relationship of employer and employee between the appellant and first respondent; that the respondent was entitled to notice pay and retrenchment compensation having worked for more than 240 days. He was directed to be reinstated with back wages. The Writ Petition thereagainst was dismissed by High Court on the ground that it could not determine disputed question of fact in exercise of its jurisdiction under Article 226 of the Constitution of India, 1950. Intra-Court appeal was also dismissed by Division Bench of High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. Lands are acquired in terms of the provisions of the Land Acquisition Act. It is for the authorities concerned to conduct the cases relating to acquisition of land in the courts of law. Although the appellant was providing for the funds for meeting the expenditure in relation to payment of wages etc. to the first respondent herein, evidently, the relationship between an employer and employee did not come into being between the appellant and the first respondent. The offer of appointment was issued by the Special Land Acquisition Officer. First respondent was working under his supervision and control. His services were being taken by the Special Land Acquisition Officer for a particular purpose, namely, looking after the land acquisition cases. When the purpose for which the first respondent was appointed ceased to exist, his services were terminated. If there did not exist any relationship of employer and employee, the question of the appellant's fulfilling the obligations required in terms of the UP Industrial Disputes Act, namely, payment of retrenchment compensation or one month's pay in lieu of notice did not and could not arise. If the first respondent was a workman working under the Special Land Acquisition Officer, the question of compliance of the said provisions by the said authority would also not arise. [Para 12] [51-D-G]

2. The High Court, committed a serious error in refusing to interfere in the matter. When existence of the relationship of employer and employee is disputed, the same was required to be

A determined in presence of all the parties who are interested in the subject matter of reference. The Special Land Acquisition Officer was not a party to the reference. Labour Court, neither went into the question as regards the nature of duties required to be performed by the first respondent and also other relevant factors, namely, who **B** had issued the offer of appointment; who used to supervise and control the work of the respondent; or who was the authority to grant leave and take disciplinary action etc. The said questions were relevant. [Para 12] [51-H; 52-A-B]

C *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.*, [2004] 3 SCC 514, referred to.

3. The High Court, furthermore, committed a serious error insofar as it failed to take into consideration that a direction for reinstatement cannot be issued when there does not exist any post. **D** Requirement of the Special Land Acquisition Officer to have the services of some employees was for a short period. No such post was created by the competent authority. The services of the first respondent were necessary for looking after the land acquisition cases of the petitioner. Even in a case where the workman is **E** appointed on contractual basis, the industrial court would ordinarily not direct for reinstatement. Subject to statutory interdict, the agreement between the parties in this behalf must be given due weight. [Para 13] [52-C-F]

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4809-10 of 2007.

From the Judgment and final Order dated 13.02.2004 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Special Appeal No. 76 of 1998.

G Ranjit Saxena, Anita Pandey and Vishnu Sharma for the Appellant.

S. Wasim A. Kadri, Shalini Kumar, G.V. Rao, Kamendra Mishra and Varinder Kumar Sharma for the Respondents.

H The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

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2. The State of Uttar Pradesh acquired land for the appellant company. Various land acquisition proceedings therefor were initiated. The Special Land Acquisition Officer, the acquiring authority, expressed its intention to engage some daily wagers to look after the pending acquisition cases and asked the appellant to meet the said expenses or depute one of its staff for the said purpose. Appellant agreed to the proposal of the Special Land Acquisition Officer that a person on daily wages may be appointed on an ad hoc basis. The Special Land Acquisition Officer, *inter alia*, engaged three persons on daily wages. Their wages were paid from the fund provided for by the appellant. Appointments of the said employees were for a temporary period and so long as their services were necessary for the purpose of looking after the land acquisition cases, services of the said employees were necessary for the period 1.5.1981 to 6.3.1982.

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3. The services of the respondent having been terminated with effect from 6.3.1982, an industrial dispute was raised. The State of Uttar Pradesh referred the following dispute for adjudication to the Presiding Officer, Labour Court, Lucknow :

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“Whether the termination/removal of Shri Jai Prakash Srivastava, Case-Clerk, son of Shri Gomti Prasad Srivastava, from services by the Management w.e.f. 6.3.1982, is just and legal ? If not, then to what benefit/relief the workman is entitled entitled?”

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4. Whereas the contention of the first respondent was that there existed a relationship of employer and employee by and between the appellant and himself; the contention raised on the part of the petitioner was that there did not exist any such relationship. The validity of the reference made by the State was also questioned.

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5. In its award dated 30.9.1996, the Presiding Officer, Labour Court, UP, Lucknow, in Award Dispute No. 28 of 1985 recorded that the first respondent was appointed by the Special Land Acquisition Officer for conducting pairvi on behalf of the project in the cases of land acquisition. The learned Labour Court, however, was of the opinion that as the salary of the first respondent was made available to the Land

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A Acquisition Officer from the funds provided for by the appellant, a relationship of employer and employee came into being, holding :

B “From the documents available on record, it is very well proved that although the appointment of the applicant-workman Shri Jai
C Prakash was not made on the basis of any appointment letter issued independently by the Chief Project Manager of Tanda Thermal
D Power Project, but was made by the Special Land Acquisition Officer on daily wages on the basis of the approval given by the Chief Project Manager on the request/proposal made by the
E Special Land Acquisition Officer. The Management had also approved extension of the above appointment from time to time and also came to a decision for not continuing the services of the applicant-workman and the Chief Project Manager had duly informed the Special Land Acquisition Officer for discontinuing the services of the applicant-workman. Finally the services of the applicant-workman were terminated. It is also proved from the evidence that the applicant-workman was doing the work of pairvi in the cases relating to the Tanda Thermal Power Project and the payment of his salaries was also made from the funds made available by Management. In the circumstances, it is proved that the appointment of the applicant-workman was made on the basis of approval given by Management.”

F 6. Opining that the first respondent worked for more than 240 days during the aforementioned period and as no notice pay as also retrenchment compensation had been paid to the workman, he was directed to be reinstated with back wages.

G 7. The writ petition filed by the appellant thereagainst before the Lucknow Bench of Allahabad High Court which was marked as Writ Petition No. 222 of 1998, was dismissed on the premise that the disputed question of fact could not be determined by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

H 8. The Division Bench of the High Court on an intra court appeal preferred by the appellant refused to interfere therewith stating that the Special Appeal was not maintainable.

9. Appellant is, thus, before us. A

10. Mr. Ranjit Saxena, learned counsel appearing on behalf of the petitioner, would submit that the High Court committed an error in passing the impugned judgment insofar as it failed to take into consideration that there did not exist any relationship of employer and employee by and between the petitioner and the first respondent; appointment of the first respondent having been made by the Special Land Acquisition Officer. B

11. Our attention has not been drawn to any statute or statutory rules in terms whereof such an appointment could be made by a revenue authority. It was, therefore, only an ad hoc employment. C

12. Lands are acquired in terms of the provisions of the Land Acquisition Act. It is for the authorities concerned to conduct the cases relating to acquisition of land in the courts of law. Although the appellant was providing for the funds for meeting the expenditure in relation to payment of wages etc. to the first respondent herein, evidently, the relationship between an employer and employee did not come into being between the appellant and the first respondent. It did not require the services of the appellant. The Special Land Acquisition Officer did. The offer of appointment was issued by the Special Land Acquisition Officer. D
First respondent was working under his supervision and control. His services were being taken by the Special Land Acquisition Officer for a particular purpose, namely, looking after the land acquisition cases. E
When the purpose for which the first respondent was appointed ceased to exist, his services were terminated. If there did not exist any relationship of employer and employee, the question of the appellant's fulfilling the obligations required in terms of the UP Industrial Disputes Act, namely, payment of retrenchment compensation or one month's pay in lieu of notice did not and could not arise. F
If the first respondent was a workman working under the Special Land Acquisition Officer, the question of compliance of the said provisions by the said authority would also not arise. G
The High Court, therefore, in our opinion, committed a serious error in refusing to interfere in the matter. When existence of the relationship of employer and employee is disputed, the same was required to be determined in presence of all the parties who H

A are interested in the subject matter of reference. The Special Land Acquisition Officer was not a party to the reference. The learned Presiding Officer, Labour Court, UP, Lucknow neither went into the question as regards the nature of duties required to be performed by the first respondent and also other relevant factors, namely, who had issued the offer of appointment; who used to supervise and control the work of the respondent; or who was the authority to grant leave and take disciplinary action etc. The said questions were relevant. {See *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.*, [2004] 3 SCC 514}}.

C 13. The High Court, furthermore, committed a serious error insofar as it failed to take into consideration that a direction for reinstatement cannot be issued when there does not exist any post. Requirement of the Special Land Acquisition Officer to have the services of some employees was for a short period. No such post was created by the competent authority. The services of the first respondent were necessary for looking after the land acquisition cases of the petitioner. Even in a case where the workman is appointed on contractual basis, the industrial court would ordinarily not direct for reinstatement. Subject to statutory interdict, the agreement between the parties in this behalf must be given due weight.

E 14. For the reasons aforementioned, the impugned judgment cannot be sustained. The same is set aside accordingly. Appeal is allowed. As nobody has appeared on behalf of the first respondent, there shall be no order as to costs.

F K.K.T.

Appeal allowed.