# Hindustan Aeronautics Ltd vs Dan Bahadur Singh & Ors on 27 April, 2007

## Equivalent citations: AIR 2007 SUPREME COURT 2733, 2007 (6) SCC 207, 2007 AIR SCW 4933, 2007 LAB. I. C. 3209, 2007 (5) ALL LJ 478, 2008 (1) AIR JHAR R 495, 2007 (6) SCALE 415, (2007) 4 ALLMR 756 (SC), (2007) 114 FACLR 204, (2007) 4 LAB LN 93, (2007) 6 MAD LJ 267, (2007) 3 SCT 250, (2007) 5 SERVLR 370, (2007) 4 SUPREME 104, (2007) 6 SCALE 415, (2007) 3 ESC 369, (2007) 3 CURLR 513

## Author: G. P. Mathur

## Bench: G.P. Mathur, A.K. Mathur

CASE NO.:
Appeal (civil) 2195 of 2007

PETITIONER:
Hindustan Aeronautics Ltd

RESPONDENT:
Dan Bahadur Singh & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:
G.P. Mathur & A.K. Mathur

JUDGMENT:

J U D G M E N T CIVIL APPEAL NOs. 2195 OF 2007 (@ Special Leave Petition (Civil) Nos.10478-10479 of 2005) G. P. MATHUR, J.

1. Leave granted.

2. These appeals, by special leave, have been preferred against the judgment and order dated 7.3.2005 of Allahabad High Court (Lucknow Bench), by which the special appeals preferred by the appellant herein were dismissed and the judgment and order dated 31.8.1999 passed by a learned Single Judge by which two writ petitions were disposed of was affirmed.

3. Hindustan Aeronautics Ltd. Muster Roll Trade Union Congress, Korwa, Sultanpur, filed Writ Petition No.10513 of 1990 against the appellant Hindustan Aeronautics Ltd., Korwa Division, Sultanpur (hereinafter referred to as 'the Company') & Ors., wherein the main relief claimed was as under :-

> "Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to regularize the services of the members of the petitioner union fully described in Annexure No.1 and place them in the pay scale of the post of Mali and allow them and treat them as continuing in service with all benefits without any break."

It was averred in the writ petition that the petitioner union is a registered trade union under the provisions of the Trade Unions Act, 1926 with the Registrar, Trade Unions U.P., Kanpur, of daily rated Malies i.e. Muster Roll employees (workmen within the meaning of the Industrial Disputes Act) working in the establishment of the appellant herein. The petitioner union was seeking regularization of services of its members and their continuance in service without any break as well as equal pay for equal work. The members of the petitioner union whose names figure at serial nos.1 to 77 in Annexure 1, are land losers as their land was acquired for establishment of appellant and the remaining persons are non land losers. The members of the petitioner union were continuing as daily rated Malies for the last about 5 to 7 years with 2-3 days break on 2 or 3 occasions in each month although the work and post continue to be available. There was a policy of the State Government to provide employment to at least one member of the family whose land had been acquired and several Government orders had been issued in this regard. The daily rated Malies were getting much less amount as wages than those Malies who were in a regular scale of pay though there was no difference in work. In spite of work and posts being available, artificial break in service was created with a view to deprive them of their continuity in service. The members of the petitioner union had put in more than 240 days of continuous service in each calendar year, yet their services had not been regularized. They were entitled to not only regularization of their services but also the pay scale of the post of Mali as there was no difference in the nature of work and duties being performed by them from those who were in the regular pay scale.

4. The appellant herein filed a counter affidavit on the ground, inter alia, that the list of members contained in Annexure 1 to the writ petition was not within the knowledge of the appellant company. The writ petitioners were being engaged as casual labourers in the appellant Company as per the settlement arrived at on 6.3.1989 between the writ petitioners and the management of the Company with the intervention of Deputy Labour Commissioner, Faizabad. It was further averred that after acquisition of land by the State Government for the purpose of setting up of Korwa Division of the Hindustan Aeronautics Ltd., factory premises were established in 1983. Since a new area had to be developed and the work had to be started from scratch, initially a large number of workmen including Malies were engaged for horticulture and land scape development work. However, at the present juncture, the horticulture work was limited for maintenance of land and garden and thus the requirement of the labourers for this work had considerably decreased and there was no continuous and full time work. The land losers whose land had been acquired were given preference for this type of work. In the settlement arrived at on 6.3.1989 it was agreed that the land losers would be engaged for 20 days in a month and non land losers would be engaged for 15 days in a month on daily basis as casual unskilled labourers. The writ petitioners were paid daily wages which was much higher than the minimum wages prescribed under the Minimum Wages Act but they could not be paid wages like Malies employed in regular pay scale. The writ petitioners cannot be given appointment on regular post as there is no continuous and full time work of that nature in the

company. It was further averred that the company is already having surplus labour and, therefore, a ban has been imposed on recruitment. The writ petitioners were being engaged essentially to fulfil the terms of the settlement arrived at on 6.3.1989. Lastly, it was submitted that the basic object of the company was to produce state of art avionics equipment for aircrafts which was being manufactured for use by the Indian Air Force. The horticulture activities are in no way connected with the production activities of the company. It was purely seasonal and intermittent in nature and there was not enough continuous and full time workload to justify the employment of a large work force on permanent basis. A supplementary counter affidavit was also filed wherein it was averred that at the initial stage manpower was required for levelling of the land for gardening purposes and for purposes related to horticulture development in factory premises as well as in residential area of the establishment. In the establishment there was no post for gardeners (Malies) and the sanction for horticulture work is being given by the General Manager of the establishment on the basis of man days required for work every month. After assessing the requirement of the establishment 2106 man days had been sanctioned in the establishment for different categories of casual workmen. The sanction given for the month of December 1998 would show that there are 78 man days for skilled grade and 2024 man days for unskilled casual workmen. The number of man days of individual workman differ in every month. The excess (balance) number of man days from land losers/skilled category was distributed every month amongst the unskilled casual workmen. A settlement in this regard was arrived at on 26.7.1995 before the Assistant Labour Commissioner, Faizabad. After the settlement, a cogent scheme had been framed by the establishment based on reasonable classification for engagement of the casual labour for the purpose of meeting the requirement of horticulture work in the establishment. It was further averred in the counter affidavit that a policy decision had been taken by the Board of Directors on 19.5.1987 by which the induction of manpower in the establishment has been frozen as on 30.5.1987. Therefore, in view of the policy decision and absence of any post, the writ petitioners could not be engaged on regular basis nor could they be regularized on any post in the establishment. The said policy decision had been taken at the apex level looking to the financial stringency and surplus manpower and also lean supply of orders and the fact that the activity for which the writ petitioners are being engaged is only incidental.

5. Writ Petition No.10524 of 1990 was filed by few individuals claiming the same relief as in Writ Petition No.10513 of 1990 and was based on same grounds.

6. The learned Single Judge, relying upon some decisions of this Court and also of the High Court, disposed of both the writ petitions by a common order and the operative part of the order is being reproduced below :-

> "Admittedly, petitioners are engaged as daily rated workers in the factory and the factory is giving them work for 18-20 days and is taking work for these days from the petitioners. Therefore, it cannot be believed that there is not work and the respondents are only engaging the petitioners in order to provide them livelihood. If there is no work, the respondents company could request the Labour Commissioner to stop the engagement. No employer can pay his workmen without work. It shows that the work is there.

> In this background the contention of the petitioners that the artificial break in service is being created by the respondents in order to deny the regularization of petitioners who having completed 240 days and having rendered more than 8 years of services satisfactorily are entitled for their regularization, and the artificial break is liable to be ignored.
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> In view of the aforesaid facts these petitions are disposed of with a direction to the respondents to absorb the petitioners as regular employees or such of them as may be required to do the quantum of work which may be available on perennial basis may be absorbed if they are otherwise found fit and they will be paid wages of regular employees. This shall be done within three months from the production of certified copy of this order.
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> However, the rest of the petitioners shall not be disengaged and shall be allowed to continue as per settlement dated 26.7.1995 and shall be regularized as and when the perennial work is available. The question as to whether the work of perennial nature is available or not shall be decided by the Deputy Labour Commissioner who shall decide the same every year in order to facilitate the absorption of the petitioners. No order as to costs."

7. Feeling aggrieved by the directions issued by the learned Single Judge, the appellant herein preferred special appeals but the same were dismissed by the impugned order dated 7.3.2005 on the finding that there was no illegality or infirmity in the judgment and order of the learned Single Judge by which the writ petitions were disposed of.

8. Before considering the contentions raised by learned counsel for the parties, it is necessary to set out the terms of the settlement which was entered into by the parties before the Deputy Labour Commissioner, Faizabad. Paras 1 to 3 of the settlement dated 6.3.1989 which are relevant for the controversy in hand are being reproduced below :-

> "1. The land losers shall be given preference in engaging for the work in Horticulture Department and they will be given the job for 20 days a month as required.
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> 2. Other casual workers (other than land losers) who have completed 240 days in a calendar year, shall be given the job for 15 days a month as required.
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> 3. Case of other casual labourers of Horticulture Department who are not covered under above paras (1) or (2), efforts will be made to engage them through other departments. As regards their work and condition of duty, H.A.L. Management will have no responsibility."

Para 2 of the settlement dated 26.7.1995 which was arrived at by the parties before the Assistant Labour Commissioner, Faizabad, which is relevant, is being reproduced below :-

> "2. Demand No.9 which is related to distribution of working days, both parties agreed that Employer will distribute all the available and approved man days among all the labourers. 67 land losers and two skilled labourers will be given work every month from available working days. In this way remaining man days after utilization form 2106 man days will be equally distributed among the other 20 non land loser labourers. Balance part or fraction of the day will not be taken into account for this purpose."

9. Shri R.N. Trivedi, learned counsel for the appellant, has submitted that Hindustan Aeronautics Ltd. is a Government Company within the meaning of Section 617 of the Companies Act and the persons employed in the factory of the appellant Company at Korwa are not government servants but are mainly governed by the provisions of Industrial Disputes Act and other allied enactments. A government servant enjoys a status on account of constitutional provisions and rules framed under Article 309 of the Constitution, which is not the case with the members of the respondent union. Learned counsel has submitted that the respondent union having entered into settlements with the appellant on 6.3.1989 and 26.7.1995 can claim rights only on the basis of the said settlements and no claim for regularization or permanency in service or grant of pay scale at par with those who are in the regular establishment of the appellant is maintainable. Learned counsel for the respondents has, on the other hand, submitted that the members of the respondent union had worked for more than 240 days in a year for more than 6-7 years before the filing of the writ petition. An artificial break of 2-3 days was deliberately created twice or thrice in a month in their service just to deprive them of continuity in service. He has further submitted that the concerned workmen having worked for a very long period and work being available, they should be given permanent status and also the same pay scale which is being given to those who are in the regular establishment of the appellant.

10. We have considered the submissions made by learned counsel for the parties. The position of a government servant is entirely different from that of a workman who is working in an industrial establishment like the appellant Company. A government servant enjoys a status and a security of tenure on account of certain constitutional provisions. In Union Public Service Commission v. Girish Jayanti Lal Veghela & Ors. (2006) 2 SCC 482 it was held as under :-

> " In the case of a regular government servant there is undoubtedly a relationship of master and servant but on account of constitutional provisions like Articles 16, 309 and 311 his position is quite different from a private employee. Thus, employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by it."

11. An appointment in government may be on probation or in temporary capacity or permanent in nature. A permanent government servant has a right to hold the post and he cannot be dismissed or removed or reduced in rank unless the requirements of Article 311 of the Constitution or the Rules

governing his service are complied with.

12. The appellant, Hindustan Aeronautics Ltd., is a government company within the meaning of Section 617 of the Companies Act. What will be the legal position of a Government Company and whether its employees can be treated to be government servants was examined in Heavy Engineering Mazdoor Union v. State of Bihar and Ors. (1969) 1 SCC 765 and it was held as under in para 4 of the reports:

> ".....It is an undisputed fact that the company was incorporated under the Companies Act and it is the company so incorporated which carries on the undertaking. The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways....."

In A.K. Bindal v. Union of India (2003) 5 SCC 163 the difference between an employee of a government and an employee of a Government Company was pointed out and it was held :

> "17. The legal position is that identity of the Government Company remains distinct from the government. The Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government Company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (See Pyare Lal Sharma v. Managing Director (1989) 3 SCC 448)."

An employee working in an industrial establishment enjoys a limited kind of protection. He may lose his employment in various contingencies which are provided under the Industrial Disputes Act such as lay off as provided in Section 25-C, retrenchment as provided in Section 25-F, transfer of industrial establishment or management of an undertaking as provided in Section 25-FF, closure of undertaking as provided in Section 25-FFF. He may be entitled to notice or wages in lieu of notice and monetary compensation depending upon the length of service put in by him. But the type of tenure of service normally enjoyed by a permanent employee in Government Service, namely, to continue in service till the age of superannuation, may not be available to an employee or workman working in an industrial establishment on account of various provisions in the Industrial Disputes Act where his tenure may be cut short not on account of any disciplinary action taken against him, but on account of a unilateral act of the employer. Therefore, the claim for permanency in an industrial establishment has to be judged from a different angle and would have different meaning.

13. In B.N. Nagarajan & Ors. v. State of Karnataka & Ors. (1979) 4 SCC 507, it was held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology

followed in making the appointments. Further, when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. This view has been approved by a Constitution Bench in Secretary, State of Karnataka v. Uma Devi (2006) 4 SCC 1 (para 16). It was emphasized here that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

14. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularization in service. In Madhyamik Shiksha Parishad v. Anil Kumar Mishra & Ors. (2005) 5 SCC 122 it was held that the completion of 240 days' work does not confer the right to regularization under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In M.P. Housing Board & Anr. v. Manoj Shrivastava (2006) 2 SCC 702 (paragraph 17) after referring to several earlier decisions it has been reiterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. This view has been reiterated in Gangadhar Pillai v. Siemens Ltd. (2007) 1 SCC 533. The same question has been examined in considerable detail with reference to an employee working in a Government Company in Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd. 2007(1) SCC 408 and paragraphs 34 and 35 of the reports are being reproduced below:-

> 34. Thus, it is well settled that there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of E. Ramakrishnan and Ors.

v. State of Kerala and Ors. (1996) 10 SCC 565 this Court held that there can be no regularization de hors the rules. The same view was taken in Dr. Kishore v. State of Maharashtra (1997) 3 SCC 209 and Union of India and Ors. v. Bishambar Dutt (1996) 11 SCC 341. The direction issued by the Services Tribunal for regularizing the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In Dr. Surinder Singh Jamwal and Anr. v. State of Jammu & Kashmir and Ors. AIR 1996 SC 2775, it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules.

15. In the judgment under challenge the High Court has issued a direction to absorb the members of the respondent union as regular employees or such of them as may be required to do the quantum of work which may be available on perennial basis and has issued a further direction that they will be paid the wages of regular employees. It has also been directed that such of the members of the respondent union who are not absorbed as regular employees shall not be disengaged and shall be allowed to continue as per settlement dated 26.7.1995 and shall be regularized as and when the

perennial work is available. The direction issued by the High Court in effect has two components i.e. creation of posts and also payment of regular salary as in absence of a post being available a daily wager cannot be absorbed as a regular employee of the establishment. This very question has been considered in Indian Drugs & Pharmaceuticals Ltd. (supra) and, therefore, we do not consider it necessary to refer to the various reasons given and decisions cited therein. Paras 37, 38 and 47 of the reports, wherein the Bench recorded its conclusions read as under :-

> "37. Creation and abolition of posts and regularization are a purely executive function vide P.U. Joshi v. Accountant General, Ahmedabad and Ors. (2003) 2 SCC
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> 632. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits.
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> 38. The respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment of regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the court for continuation in service or payment of regular salary to a casual, ad hoc, or daily rate employee. Such directions are executive functions, and it is not appropriate for the court to encroach into the functions of another organ of the State. The courts must exercise judicial restraint in this connection. The tendency in some courts/tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situation can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.
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> 47. We are of the opinion that if the court/tribunal directs that a daily rate or ad hoc or casual employee should be continued in service till the date of superannuation, it is impliedly regularizing such an employee, which cannot be done as held by this Court in Secretary, State of Karnataka v. Umadevi (2006) 4 SCC 1, and other decisions of this Court."

16. In view of the discussion made above, the impugned judgment of the learned Single Judge which was affirmed in appeal by the Division Bench cannot be sustained and has to be set aside. The respondents are not entitled to the relief claimed by them.

17. The appeals are accordingly allowed. The judgment and order dated 31.8.1999 of the learned Single Judge and judgment and order dated 7.3.2005 of the Division Bench are set aside and the writ petitions filed by the respondents herein are dismissed. It is, however, made clear that in case there is any violation of the terms of the settlements on the part of the appellant herein, the respondents will be entitled to enforce their rights in accordance with law. No order as to costs.