Union Of India & Anr vs Kartick Chandra Mondal & Anr on 15 January, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3455, 2010 (2) SCC 422, 2010 AIR SCW 743, 2010 LAB. I. C. 881, (2010) 124 FACLR 574, (2010) 2 SERVLJ 81, (2010) 1 LAB LN 687, (2010) 4 ALL WC 4206, (2010) 4 MAD LJ 973, (2010) 2 JCR 39 (SC), (2010) 1 ESC 109, 2010 (1) SCALE 454, (2010) 1 SERVLR 554, (2010) 1 SCT 599, (2010) 2 PUN LR 710, (2010) 1 CURLR 436, (2010) 1 SCALE 454

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Bench: Mukundakam Sharma, J.M. Panchal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2090 OF 2007

UNION OF INDIA & ANR. ..... Appellants

Versus

KARTICK CHANDRA MONDAL & ANR. .... Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. By filing the present appeal, the appellants have challenged the legality and validity of the order dated 17.08.2005 passed by the Calcutta High Court whereby the Division Bench of the Calcutta High Court upheld the direction given by the Central Administrative Tribunal [for short `CAT'] to absorb the respondents in any suitable post commensurate with their qualifications.

2. The issue that is, therefore, canvassed before this Court by the appellants is whether such direction to absorb the respondents could have been issued by the CAT and the Calcutta High Court, particularly, in view of the fact that the respondents were engaged as Peons on casual basis without

having been recruited through the proper procedure and having not been sponsored by the Employment Exchange and having worked with the appellant no. 2 only for two years, i.e., from 1981 to 1983.

3. The respondents herein, Shri K.C. Mondal and Shri S.K. Chakraborty, were engaged to work as casual labours in the office of the Ordnance Factory Board, Kolkata without going through the regular process of recruitment of their names being sponsored by the Employment Exchange, which was the extant policy at the relevant point of time. After their engagement as casual labours, they worked for two years with appellant no. 2, i.e., till 1983 and they were disengaged from service in the month of April, 1983 on the ground that their names were not sponsored by the Employment Exchange.

4. The respondents thereupon filed an Original Application before the CAT, registered as O.A. No. 285 of 1990 seeking a direction to the appellant no. 1 for their re-engagement and also for regularisation of their service w.e.f. 1983 or 1985. In support of the said claim, the respondents relied upon the Government of India notification issued by the Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension [Department of Pensions and Training] dated 07.05.1985 issued under Office Memorandum No. 49014/18/84-Estt.[G] on the subject of regularisation of the services of the casual workers in Group `D' posts by way of relaxing the condition of recruitment of casual workers through Employment Exchanges only.

5. The counsel for the respondents had, before the Tribunal, urged that the office memorandum dated 07.05.1985 cannot be said to apply only to those who were in service as casual workers at that time but it was a general policy governing the regularisation of the service of causal workers who were recruited otherwise than through the Employment Exchange. It was submitted that, therefore, the benefit of the office memorandum would belong to the respondents also.

6. After hearing the parties, the Tribunal held that the contention of the learned counsel for the respondents with regard to the applicability of the said office memorandum to the respondents could not be accepted. While coming to the aforesaid conclusion, the Tribunal relied upon the language of the said Office Memorandum, the relevant part of which is extracted below: -

> "Though these persons may have been continuing as casual workers for a number of years, they are not eligible for regular appointment and their services may be terminated any time. Having regard to the fact that casual workers belong to the worker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the DGE&T, that casual workers recruited before the issue of these instructions may be considered for regular appointment to Group `D' posts, in terms of the general instructions even if they are recruited otherwise than through the employment exchange, provided they are eligible for regular appointment in all other respects."

7. The Tribunal, however, granted the prayer of the respondents on the ground that 10 other similarly placed casual workers of the Ordnance Factory Board were regularised w.e.f. 01.01.1987. It

was held by the Tribunal that the aforesaid 10 employees were also casual workers and all of them were similarly situated as the respondents inasmuch as they also were not recruited through the Employment Exchange. Subsequently, the Tribunal held that the respondents could not claim regularisation of their service w.e.f. 1983 or 1985, but keeping in view the fact that they had served the Ordnance Factory Board from 1981 to 1983 with technical breaks, their cases deserved to be considered favourably for re-engagement as casual labours. In light of the aforesaid findings, the Tribunal issued a direction to the appellants to re-engage the respondents as casual labours if there was work/vacancy in preference to freshers and those who rendered lesser length of service as casual labours.

8. The respondents, thereafter, making an allegation that despite the said order passed by the CAT the appellants did not pass any order in favour of the respondents filed a Contempt Application before the Tribunal which was disposed of by the Tribunal stating that since no time limit was stipulated in the order of the Tribunal, therefore, the appellants could not be held to have committed any contempt of Court. Since, even thereafter, no order was passed by the appellants to re-engage the respondents in terms of the order of the Tribunal, a Writ Petition was filed by the respondents before the High Court which was again disposed of by the High Court with a liberty to the respondents to approach the Tribunal in terms of which the respondents filed a fresh petition before the Tribunal which was registered as O.A. No. 903 of 2000. The said O.A. was heard and disposed of by the impugned judgment and order dated 11.03.2004 passed by the Tribunal with a direction to the appellants to absorb the respondents in any suitable post commensurate with their qualifications. The appellants being aggrieved by the aforesaid judgment and order filed a Writ Petition in the Calcutta High Court which was registered as WPCT No. 517 of 2004 for setting aside and quashing the aforesaid order passed by the Tribunal. The Calcutta High Court heard the parties in the said Writ Petition and by its judgment and order dated 17.08.2005 dismissed the said Writ Petition holding that the directions of the Tribunal are justified and that there is no valid ground for interfering with the aforesaid directions given by the CAT. Being aggrieved by the said judgment and order, the present appeal has been filed by the appellants on which we have heard the learned counsel appearing for the parties.

9. Several contentions were raised by the counsel appearing for the appellants before us to challenge the legality and validity of the orders passed by the Calcutta High Court as also by the CAT. It was submitted that so far as the directions issued by the CAT in O.A. No. 285 of 1990 are concerned, the only direction issued in the said order was to re-engage the respondents as casual labours if there was work/vacancy in preference to freshers and those who rendered lesser length of service as casual labours. It was pointed out that the respondents could not be appointed as casual labours in terms of the aforesaid direction as there was a total ban on fresh appointments and, therefore, there was no occasion of giving any fresh appointment to any person and that no fresh engagement was made of any casual labour as against any work/vacancy. So far as the notes of Assistant Legal Adviser and Director General are concerned, it was submitted that no reliance could have been placed on the same by the High Court as they were internal communications and that they having not been publicized, the same could not have been treated as official communication made by the competent authority. It was submitted that the same were only official notes in the course of processing of the files of the respondents and that the same could not have been treated by the High

Court as orders issued and publicized by the competent authority and, therefore, the disposal of the Writ Petition on the said notes was invalid and unjustified. It was also submitted that neither the CAT nor the High Court has any power to direct absorption of the respondents when they had worked only for two years and on the date when the O.A. No. 285 of 1990 was filed before the CAT they were not even working as casual workers. The further submission of the counsel appearing for the appellant was that the office memorandum which was issued in 1985 could not have been relied upon or made the basis for issuing orders in favour of the respondents, particularly, in view of the fact that on the date when the aforesaid office memorandum was issued the respondents had already been disengaged from service and were not working with the appellant no. 2.

10.The aforesaid submissions of the counsel appearing for the appellants were refuted by the counsel appearing for the respondent contending, inter alia, that since the note written by the Director General to which reference has been made by the High Court as also the aforesaid communications between the authorities were in favour of the respondents both the Tribunal and the High Court were justified in relying on the same for issuing necessary directions to the appellants. It was also submitted by him as has been held by the High Court that there was a clear discrimination, for on the one hand ten persons who were similarly situated as the respondents were absorbed by the appellants whereas the respondents were denied similar benefits without any reasonable explanation for such hostile discrimination.

11.In light of the aforesaid submissions of the counsel appearing for the parties we have considered the entire records. So far as the Office Memorandum dated 07.05.1985 is concerned, the same was issued by way of relaxation of the condition of recruitment of casual workers. But the fact remains that the respondents worked with the appellants only for two years, i.e., from 1981 to 1983 and admittedly on the date when the aforesaid office memorandum was issued they were not working with the appellant no. 2. There is nothing in the contents or in the language of the said office memorandum which would indicate that there was an intention to give a retrospective effect to the contents of the said notification. Instead, the language used in the aforesaid notification clearly shows that the same was intended to be prospective in nature and not retrospective. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to the recent decision of this Court in Ansal Properties and Industries Limited v. State of Haryana [(2009) 3 SCC 553].

12.As has been noted earlier, the said office memorandum stated that the same would apply only to those persons who might have been continuing as casual workers for a number of years and who were not eligible for regular appointment and whose services might be terminated at any time. Therefore, it envisaged and could be made applicable to only those persons who were in service on the date when the aforesaid office memorandum was issued. Unless and until there is a clear intention expressed in the notification that it would also apply retrospectively, the same cannot be given a retrospective effect and would always operate prospectively.

13.The next issue that we are required to consider pertains to internal communications which are relied upon by the respondents and which were also referred to by the Tribunal as well as by the High Court. Ex facie, the aforesaid communications were exchanged between the officers at the level of board hierarchy only. An order would be deemed to be a Government order as and when it is issued and publicized. Internal communications while processing a matter cannot be said to be orders issued by the competent authority unless they are issued in accordance with law. In this regard, reliance may be placed on the decision of this Court in State of Bihar and Others v. Kripalu Shankar and Others [(1987) 3 SCC 34] wherein this Court observed, in paragraphs 16 and 17, as follows: -

> "16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It involves a complicated process. In a democratic set up, it is conducted through the agency of a large number of officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub- section (c) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government action. "emphasis supplied"

17. In the case of Bachhittar Singh v. State of Punjab a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file, which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said article and was then communicated to the party concerned. This is how this Court dealt with the effect of the noting by a Minister on the file:

> "The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.""

Besides, the said communications were exchanged after disposal of the Original Application by the Tribunal. The note on which reliance has been placed by the High Court specifically, was written by the Deputy Director, Headquarters for Director General, Ordnance Factories dated 20.11.1997 and it refers to the orders passed by the Tribunal as also the order passed in the contempt petition. From a bare perusal of the note it transpires that it was prepared on a representation of Shri K.C. Mondal, respondent no. 1 herein, and was submitted to the Ministry of Defence requesting to consider his case for recruitment/absorption/regularisation of services of casual workers in Group `D' post. That itself indicates that the proper and competent authority to pass an order for recruitment, absorption and regularisation was the Ministry of Defence and not the Director General, Ordnance Factory. In the said note itself it was clearly mentioned that an early action in the matter was requested, which means that the said order was not the official communication which was issued from the Ordnance Factory Board and that the Director General, Ordnance Factory was himself not the competent authority to pass an order regarding absorption, recruitment and regularisation of service of the respondents. In the said note it was further stated that the Ministry of Defence may pass necessary orders to allow regularisation of the services of Shri K.C. Mondal and Shri S.K. Chakraborty in terms of the aforesaid office memorandum dated 07.05.1985 or to accord permission to recruit Shri K.C. Mondal and Shri S.K. Chakraborty for the post of Peon without reference to the Employment Exchange in relaxation of ban. The note of the Legal Adviser culminated in the aforesaid note of the Deputy Director which clearly indicates that no official order was passed by the competent authority and therefore issuing directions to the appellants to absorb the respondents on the basis of the same was unjustified and uncalled for.

14.The next issue that we are now required to consider is whether the aforesaid respondents could have been directed to be so absorbed. Similar issues regarding absorption or regularisation of casual labours are raised time and again in various branches and offices of the Government and this Court has had the opportunity to deal with such issues in the past in several cases. We attempt to refer to two decisions of this Court which are considered to be the latest decisions and landmark decisions and which are binding on us. We may refer to the constitutional bench decision of this Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others reported in (2006) 4 SCC 1. The relevant portion of the said judgment, viz., paragraphs 43 & 45, are as follows:-

> "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that

merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. ....."

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain--not at arm's length-- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. .... It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

15.Subsequent to the aforesaid decision, the issue again arose for consideration before the 3-Judges Bench of this Court in the Official Liquidator v. Dayanand and Others reported in (2008) 10 SCC 1 wherein this Court in paragraphs 68 and 116 observed as follows: -

"68. The abovenoted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the

> sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system."
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> "116. In our opinion, any direction by the Court for absorption of all company - paid staff would be detrimental to public interest in more than one ways. Firstly, it will compel the Government to abandon the policy decision of reducing the direct recruitment to various services. Secondly, this will be virtual abrogation of the statutory rules which envisage appointment to different cadres by direct recruitment."

16.In our considered opinion, the ratio of both the aforesaid decisions are clearly applicable to the facts and circumstances of the present case. In our considered opinion, there is misplaced sympathy shown in the case of the respondents who have worked with the appellants only for two years, i.e., from 1981 to 1983. Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court. However, we intend to refer to a latest decision of this Court on this point in the case of State of Bihar v. Upendra Narayan Singh & Others [(2009) 5 SCC 69], the relevant portion of which is extracted hereinbelow: -

> "67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order"

[A reference in this regard may also be made to the earlier decisions of this Court. See also: 1) Faridabad CT. Scan Centre v. D.G. Health Services and Others [(1997) 7 SCC 752]; 2) South Eastern Coalfields Ltd. v. State of M.P. and Others [(2003) 8 SCC 648] and 3) Maharaj Krishan Bhatt and Another v. State of J&K and Others [(2008) 9 SCC 24]].

If at this distant date an order is passed for reappointment or absorption of the respondents, the same would be in violation of the settled law of the land reiterated in the decisions relied upon in this judgment.

17.Counsels for the parties also fairly agree that the respondents have not been working with the appellants at any point of time after 1983. There was also a continuing ban on recruitment due to which there was no recruitment or appointment in the Group `D' posts of the Ordnance Factory Board.

18.In view of the aforesaid discussions and conclusions arrived at, we are of the considered opinion, that this appeal should be allowed, which we hereby do. We set aside the orders passed by the Tribunal as also by the High Court. There will be no order as to costs.

.....J. [J.M. Panchal] ..... [Dr. Mukundakam Sharma] New Delhi, January 15, 2010.