State Of M.P. & Ors vs Arjunlal Rajak on 24 February, 2006

Equivalent citations: 2006 AIR SCW 1128, 2006 (2) SCC 711, 2006 LAB IC 1319, (2006) 2 LABLJ 104, (2006) 2 JCR 135 (SC), (2006) 2 LAB LN 842, (2006) 2 SCALE 610, (2006) 109 FACLR 156, 2006 (2) AIR JHAR R 318, (2006) 7 SERVLR 257, (2006) 1 UPLBEC 991, (2006) 3 SCJ 583, (2006) 5 ALL WC 5143, 2006 LABLR 381, (2006) 2 SUPREME 322, (2006) 2 ESC 135, 2006 ALL CJ 2 959, (2006) 2 PAT LJR 144, (2006) 2 JAB LJ 24

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Bench: S.B. Sinha, P.K. Balasubramanyan

CASE NO.:
Appeal (civil) 1266 of 2006

PETITIONER:
State of M.P. & Ors

RESPONDENT:
Arjunlal Rajak

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T [Arising out of SLP (C) No. 2567 of 2005] S.B. SINHA, J :

Leave granted.

The respondent was appointed as a Chowkidar by the appellants. Admittedly, no offer of appointment was issued to him nor the recruitment rules applicable for filling up of a permanent or temporary post have been followed. The appellants contend that the respondent was engaged in the production division of Forest Department of District Guna which has since been wound up. His services were thereafter terminated. Contending, inter alia, that he had worked in different departments of the State from August, 1984 to July 8, 1992, his services were terminated without complying with the requirements of Section 25F of the Industrial Disputes Act, 1947, a complaint petition was filed by the respondent before the Presiding Officer, Labour Court No. 3, Gwalior. By reason of an award dated 12.7.1999 on a finding that the Respondent had worked for more than 240 days in a calendar year and having regard to the fact that no retrenchment compensation was paid, he was directed to be

reinstated in service with full back wages.

The Labour Court does not appear to have taken into consideration the pleas raised by the appellant herein that the production division at Guna was wound up by an order dated 3.7.1992 of the State of Madhya Pradesh, even while considering the relief which was required to be given in the facts and circumstances of the case. The High Court on a writ petition filed by the appellant although noticed the said fact dismissed the same petition stating:

"Even though on behalf of the employer, statement of one Ashok Kumar was recorded but the aforesaid witness could not dispute the fact with regard to working of the employee. On the contrary, the said witness, in his cross-examination admitted that the certificates have been issued to the respondent/employee by the competent authority of the employer and he had worked for more than 240 days in a calendar year. Considering the fact that no show cause notice was issued or retrenchment compensation was paid or enquiry was conducted before terminating the service of respondent/employee, a finding has been recorded that the respondent No. 1 was in employment since 1.8.1984 and he had completed more than 240 days continuous service in a calendar year. That being so, in view of the provisions of Section 25-B of the Industrial Disputes Act, 1947 service of respondent/employee had been terminated without following the mandatory provisions of Section 25-F, no show cause notice was issued or retrenchment compensation paid to him. Therefore, the finding recorded is based on appreciation of evidence and material available on record. The said finding is neither perverse nor warrant interference in any manner whatsoever by this Court."

Mr. B.S. Banthia, the learned counsel appearing on behalf of the appellants would submit that having regard to the fact that the respondent was appointed on daily wages and the unit in which he was working had been wound up, the Respondent could not have been directed to be reinstated with full back wages.

Mrs. K. Sharada Devi, learned counsel appearing on behalf of the respondent, on the other hand, would contend that the appellants had not made out any case before the Labour Court that the respondent was appointed under a Scheme. He, according to the learned counsel, might have been shifted from one department to the other but the same would not mean that he was appointed to work in a particular project/scheme. It was pointed out that by reason of the order of reinstatement, the respondent continues to be a daily wager and there is, thus, no reason as to why after he having been reinstated and having worked in one or the other department of the State from 2001, this Court should exercise its jurisdiction under Article 136 of the Constitution of India.

It is beyond any doubt or dispute that a daily wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution of India, all appointments must be made in conformity with the Constitutional Scheme as laid down under Articles 14 and 16 of the

Constitution of India as well as the rules made in terms of the proviso to Article 309 of the Constitution of India or in terms of a Legislative Act. Concededly, while appointing the respondent, the constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of Forest Department in the District of Guna which as noticed above stood abolished. It is, however, true that while terminating the services of the respondent the appellants had not complied with the mandatory requirements of Section 25- F of the Industrial Disputes Act and, thus, 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.

The question came up for consideration before a Division Bench of this Court in Mahendra L. Jain & Ors. Vs. Indore Development Authority & Ors. [(2005 (1) SCC 639] wherein it was categorically held:

> "This case involves 31 employees. A distinction is sought to be made by Dr. Dhavan that out of them 27 had been appointed to a project and not in a project. The distinction although appears to be attractive at the first blush but does not stand a moment's scrutiny. As noticed hereinbefore, the High Court's observation remained unchallenged, that the project was to be financed by ODA. The project was indisputably to be executed by the Indore Development Authority; and for the implementation thereof, the appointments had to be made by it. If the appellants were appointed for the purpose of the project, they would be deemed to have been appointed therefor and only because such appointments had been made by the respondent would by itself not entitle them to claim permanency. The life of the project came to an end on 30-6-1997. The maintenance job upon completion thereof had been taken over by the Indore Municipal Corporation. The appellants were aware of the said fact and, thus, raised an alternative plea in their statements of claims. The Labour Court could not have granted any relief to them as prayed for, as the Indore Municipal Corporation is a separate juristic person having been created under a statute. Such a relief would have been beyond the scope and purport of the reference made to the Labour Court by the State Government. Furthermore, the Indore Municipal Corporation was not a party and, thus, no employee could be thrust upon it without its consent.
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> In A. Umarani this Court held that once the employees are employed for the purpose of scheme, they do not acquire any vested right to continue after the project is over (see paras 41 and 43 : SCC paras 55 and 57). (See also Karnataka State Coop. Apex Bank Ltd. v. Y.S. Shetty and M.D., U.P. Land Development Corpn. v. Amar Singh10.) It is furthermore evident that the persons appointed as daily-wagers held no posts. The appointments, thus, had been made for the purpose of the project which, as indicated hereinbefore, came to an end. The plea of Dr. Dhavan to the effect that the

> appellants in Civil Appeal No. 337 of 2002 were asked to perform other duties also may not be of much significance having regard to our foregoing findings. However, it has been seen that even services of one of them had been requisitioned only for the project work. The High Court, in our opinion, was right in arriving at the conclusion that the appellants were not entitled to be regularised in service.' It is also trite that even for grant of back wages, application of mind on the part of the Industrial Court is imperative, as a relief of full back wages may not be granted automatically. In U.P. State Brassware Corpon. Ltd. & anr. Vs. Uday Narain Pandey [(2006) 1 SCC 479] this Court opined:
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> "No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

It was further held that while a decision to close down the establishment has been taken, ordinarily, back wages to a limited extent should be granted The onus to prove that he had completed 240 days of work or he had not been gainfully employed within the said period was on the workman.

Keeping in view the fact that the services of the respondent were terminated on the ground that the production unit in which he was working itself had been closed, we are of the opinion that interest of justice would be sub-served if a monetary compensation of Rs. 10,000/- is granted to him. It, however, goes without saying that he would be entitled to the wages for the period he had actually worked pursuant to or in furtherance of the order of the Labour Court and as also of the High Court upon his reinstatement. The award of the Labour Court as also the judgment of the High Court are set aside.

For the reasons aforementioned, the appeal is allowed to the aforementioned extent. However, there shall be no order as to costs.