Madhya Pradesh Administration vs Tribhuban on 5 April, 2007

Equivalent citations: 2007 AIR SCW 2357, 2007 (2) AIR JHAR R 908, 2007 LAB IC 1955, 2007 (3) AIR KAR R 433, (2007) 3 JCR 24 (SC), (2007) 3 LAB LN 597, (2007) 113 FACLR 886, (2007) 3 PAT LJR 51, (2007) 2 SCT 737, (2007) 4 SERVLR 457, (2007) 5 SCALE 397, (2007) 3 JLJR 51, (2007) 3 ALLMR 876 (SC), (2007) 2 CURLR 694, 2007 (9) SCC 748

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Bench: S.B. Sinha, Markandey Katju

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           CASE NO.:
Appeal (civil)  1817 of 2007

PETITIONER:
Madhya Pradesh Administration

RESPONDENT:
Tribhuban

DATE OF JUDGMENT: 05/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO 1817 2007 [Arising out of S.L.P. (C) No. 17917 of 2005] S.B. SINHA, J.

Leave granted.

State of Madhya Pradesh runs an establishment in Delhi known as Madhya Pradesh Bhawan. Respondent was appointed on temporary basis from time to time with breaks in services. He worked for the period 13.12.1991 to 1.3.1994. After his services were terminated, an industrial dispute was raised. The said dispute was referred for its determination before the Industrial Tribunal. The Industrial Tribunal by an Award dated 26.7.2002, while holding that in terminating the services of the respondents the appellant has failed to comply with the statutory requirements contained in Section 25 F of the Industrial Disputes Act, awarded only retrenchment compensation alongwith notice pay together with interest @ 9% per annum. Validity of the said Award was not questioned by the appellant. Respondent, however, filed a Writ Petition thereagainst. By a Judgment and Order dated 24.2.2005 and 15.4.2005, a learned Single Judge of the Delhi High Court allowed the said Writ Petition directing re-instatement of the respondent with full back wages. An intra-court appeal preferred thereagainst has been dismissed by a Division Bench of the said Court by reason of the

impugned judgment.

Mr. Vikas Singh, learned Additional Solicitor General appearing on behalf of the appellant would submit that Madhya Pradesh Bhawan being merely a Circuit House of the Government of Madhya Pradesh, is not an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act. Learned counsel urged that in that view of the matter, it was not a fit case where a direction of re-instatement with full back wages should have been issued.

Mr. Sujoy Ghosh, learned counsel appearing on behalf of the respondent, on the other hand, would submit that although the question as to whether sovereign functions of the State would come within the purview of the definition of "Industry" is pending for consideration before the Seven Judges' Bench having been referred to by a Constitution Bench in State of U.P. v Jai Bir Singh [(2005) 5 SCC 1], but so long the existing law is not set aside, Madhya Pradesh Bhawan wherein even the private guests are also entertained would bring the establishment within the purview of "Industry". In any event, the industrial court having arrived at a finding to that effect in its Award dated 26.7.2002 which having not been questioned, the appellant cannot be permitted to raise the same before this Court. It was contended that artificial breaks after 89 days of service being not bonafide, the termination of the services of a workman would not come within the exceptions envisaged under Section 2(oo) (bb) of the Act. It was urged that Industrial Disputes Act does not make any distinction between a daily wager and the permanent employee, in view of the definition of "workman" as contained in Section 2(s) thereof. The High Court, therefore, cannot be said to have committed any illegality in directing the re-instatement of the respondent with full back wages as admittedly the provisions of Section 25 F of the Industrial Disputes Act had not been complied with.

The question as to whether the activities of the Appellant satisfy the tests laid down in the statutory definition of "Industry" as contained in Section 2(j) of the Industrial Disputes Act or not, in our opinion need not be gone into in this case. Industrial Court opined that it was an Industry. The legality of the Award of the Industrial Court was not questioned. So far as the appellant is concerned, it, thus, attained finality. It, therefore, in our opinion cannot now be permitted to turn round and contend that its Delhi establishment does not come within the purview of the definition of "Industry".

The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed re-instatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application for constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in

Secretary, State of Karnataka and Others v Umadevi (3) and Others [(2006) 4 SCC 1], and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors.

See M.P. Housing Board and Another v Manoj Shrivastava [(2006) 2 SCC 702], State of M.P. and Others v Arjunlal Rajak [(2006) 2 SCC 711] and M.P. State Agro Industries Development Corpn. Ltd and Another v S.C. Pandey [(2006) 2 SCC 716] Our attention has been drawn to a recent decision of this Court in Jasbir Singh v. Punjab & Sind Bank and Others reported in [(2007) 1 SCC 566] by the learned counsel appearing on behalf of the respondent. We do not see as to how the said decision is applicable to the fact of the present case.

In Jasbir Singh (supra), the Order of termination was passed on the ground of misconduct. The said question was also the subject matter of a suit, wherein the Civil Court had held that the appellant therein was not guilty of the misconduct. In that context only, the question in regard to the relief granted by the Court was considered in the light of the relief which may be granted by the Industrial Court under Section 11A of the Industrial Disputes Act stating;

> "It was, however, urged that no back wages should be directed to be paid. Reliance in this behalf has been placed on U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey. In that case, this Court was dealing with a power of the Industrial Courts under Section 11-A of the Industrial Disputes Act. Therein, as the establishment was closed, the question of reinstatement of the workman did not arise. Still then, 25% back wages were directed to be paid as also the compensation payable in terms of Section 6-N of the U.P. Industrial Disputes Act.
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> The judgments of both the civil court and the criminal court established that the appellant was treated very unfairly and unreasonably. For all intent and purport, a criminal case was foisted upon him. A confession, according to learned Chief Judicial Magistrate, was extracted from him by the bank officers in a very cruel manner. It is, therefore, not a case where back wages should be denied. The respondent Bank has tried to proceed against the appellant in both in civil proceedings as well as in criminal proceedings and at both the independent forums, it failed."

We may notice that recently in Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivastava and Another [(2007) 1 SCC 491], a Bench of this Court opined :

> "With regard to the contention of the respondents that in the present fact scenario retrenchment is bad under law as conditions under Section 6-N, which talks about a reasonable notice to be served on an employee before his/her retrenchment, is not complied with; we are of the view that even under Section 6-N the proviso states that "no such notice shall be necessary if the retrenchment is under an agreement which

> specifies a date for the termination of service". In the present case on the perusal of the appointment letter it is clear that no such notice needs to be issued to Respondent No. 1.
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> The respondents had referred to many cases with regard to back wages to be paid to the retrenched workman. The learned counsel cited a string of decisions of this Court in support of this contention. We are however not addressing this plea of the respondents as we have already observed that Respondent 1 is not a workman under the Industrial Disputes Act, 1947 and the U.P. ID Act, 1947 and also that the retrenchment was not illegal and therefore the question of back wages does not arise."

We may also notice that in Uttranchal Forest Development Corporation v M.C. Joshi [2007 (3) SCALE 545], this Court held;

> "Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6N of the UP Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well-settled by reason of a catena of decisions of this Court that, the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.
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> In Haryana State Electronics Development Corporation v Mamni [AIR 2006 SC 2427], this Court directed payment of compensation. Similar orders were passed in North-Eastern Karnataka Rt. Corporation v. Ashappa [(2006) 5 SCC 137] and U.P. State Road Transport Corporation v. Man Singh [(2006) 7 SCC 752] In Man Singh (supra) it was held :-
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> "7. The respondent admittedly raised a dispute in 1986, i.e. after a period of about 12 years, it may be true that in an appropriate case, as has been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back wages for the period during which the workman remains absent as has been held by this Court in Gurmail Singh vs. Principal, Govt. College of Education. But the discretionary relief, in our opinion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory corporation Keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time. i.e. after a period of more than 30 years, to direct

> reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.
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> 8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000 to him. Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand, State of MP vs. Arjunlal Rajak, Nagar Mahapalika (now Municipal Corporation) v. State of U.P., and Haryana State Electronics Development Corporation Ltd. v. Mamni."

It was further held :

> "The legal position has since undergone a change in the light of a Constitution Bench decision of this Court in Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors. [(2006) 4 SCC 1] wherein this Court held that 'State' within the meaning of Article 12 of the Constitution of India is under a constitutional obligation to comply with the provisions contained in Articles 14 and 16 of the Constitution of India."

In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled to, had the provisions of Section 25 F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly in view of the fact that the High Court had directed re-instatement with full back wages, we are of the opinion that interest of justice would be subserved if appellant herein be directed to pay a sum of Rs. 75,000/- by way of compensation to the respondent. This appeal is allowed to the aforementioned extent.

However, in the facts and circumstances of this case, there shall be no order as to costs.