A SURENDRA KUMAR SHARMA

v.

VIKAS ADHIKARI AND ANR.

MAY 9, 2003

B [R.C. LAHOTI AND B.N. AGRAWAL, JJ.]

Labour Law:

Industrial Disputes Act, 1947—Sections 2(oo) and 25F—Retrenchment—
C *Temporary employment under Jawahar Rozgar Yojna extended from time to time—Employment came to an end after completion of 240 days—Abolition of post and termination of service—Termination upheld by Single Judge and Division Bench of High Court—On appeal, held:the termination does not amount to retrenchment—The employee knew that his employment was co-*
D *terminus with the scheme and that the post itself was abolished—Moreover he was not in the employment of Panchayat Samiti—Hence not entitled to any relief including reinstatement.*

Appellant was employed temporarily on daily wages for 100 days under a Scheme. The Scheme was merged with another Scheme known
E **as Jawahar Rozgar Yojna. On the expiry of the 100 days, instead of rendering the appellant jobless, he was given yet another temporary employment. This employment was extended from time to time. As such his employment came to an end after he completed 240 days. He initiated proceedings against Vikas Adhikari Panchayat Samiti alleging himself to**
F **be in employment of Panchayat Samiti. On his filing writ petition, High Court by interim order protected his employment. However, the post was abolished and consequently his services came to be terminated. Single Judge of High Court dismissed the writ petition holding that as the posts themselves have been abolished, the question of regularization did not arise; that the employment under the Scheme was on adhoc basis and of**
G **temporary nature co-terminus with the Scheme itself, appellant could not be said to have been retrenched within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 so as to be entitled to the relief of reinstatement if the provisions of Section 25(F) of the Act were not complied with. High Court also found that appellant was not in the employment of Panchayat Samiti. Writ appeal against the order of Single**
H

Judge was dismissed by Division Bench of High Court. A

In appeal to this Court appellant contended that without regard to the nature of employment, once a workman has worked in continuous employment for a period of 240 days, his employment could not have been terminated except by complying with the provisions of Section 25 F, hence he would be deemed to have been retrenched and entitled to the relief of B reinstatement.

Dismissing the appeal, the Court

HELD: 1. Appellant is not entitled to any relief and the view taken by High Court cannot be found fault with. Appellant was a daily wager C in a Scheme and knew it well that his employment was co-terminus with the Scheme. The post against which the appellant worked has been abolished for want of funds and has ceased to exist. [173-H; 174-A, B]

Delhi Development Horticulture Employees' Union v. *Delhi Administration, Delhi and Ors.*, [1992] 4 SCC 99; *S.M. Nilajkar and Ors.* v. *Telecom, District Manager, Karnataka.*, JT 2003 3 SC 436; *Rajendra and Ors.* v. *State of Rajasthan and Ors.*, [1999] 2 SCC 317 and *Jaipal and Ors.* v. *State of Haryana*, [1988] 3 SCC 354, relied on. D

2. There is yet another reason why the appellant cannot be allowed E any relief. The appellant had initiated proceedings against Vikas Adhikari Panchayat Samiti alleging himself to be in the employment of Panchayat Samiti. High Court has found, upon scrutiny of several documents produced for its consideration and the evidence adduced before the Labour Court that the appellant was not in the emplcyment of Panchayat Samiti at all. What was done was that a panel was prepared by the Collector of F the District enrolling the unemployed and out of that panel the appellant was taken for work on daily wages for the purpose of the Scheme. Panchayat Samiti was not the employer of the appellant.

[173-F, G; 174-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5108 of 2000. G

From the Judgment and Order dated 10.12.1999 of the Rajasthan High Court in D.B.C.S.A. No. 1488 of 1999.

G.L. Sanghi, Ajay Choudhary and Punit D.Tyagi for the Appellant. H

A V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The appellant was employed as a Junior Engineer on daily wages for a period of 100 days vide order dated 22.9.1988 in a B scheme known as Rural Employment Programme. There were two similar employment welfare schemes operating, known as - Rural Employment Programme (REP) and Rural Landless Employment Guarantee Programme (RLEGP). The two schemes were merged into one elaborate scheme known as Jawaharlal Nehru Rozgar Yojna or Jawahar Rozgar Yojna. On completion of 100 days, his employment would have terminated automatically; however, C the authority passed a specific order of termination dated 29.12.1988. Instead of being rendered jobless the appellant was offered yet another temporary employment in a scheme known as Jeevan Dhara vide order dated 17.1.1989. The employment was extended from time to time upto 12.6.1989. The last order of appointment was for a period of 7 days issued on 24.6.1989 which D came to an end on 30.6.1989. The appellant, and a few others similarly employed filed writ petitions in the High Court, which by an interim order protected their employment. However, the posts came to be abolished and the appellant's employment as also the employment of other similarly situated persons came to be terminated with effect from 7.5.1991, consequent upon the posts having been abolished. The writ petitions were dismissed by the E High Court holding that as the posts themselves have been abolished the question of regularization did not arise. The High Court also held that the workmen given employment under the schemes got the employment on an ad hoc basis, and from the very beginning knew that the employment was of a temporary nature co-terminus with the scheme itself, and therefore they could F not be said to have been retrenched within the meaning of Section 2 (OO) of the Industrial Disputes Act, 1947, so as to be entitled to the relief of reinstatement if the provisions of Section 25F of the Act were not complied with. The appellant filed a writ appeal which has also been dismissed by the Division Bench of the High Court. This is an appeal by special leave.

G Shri Sanghi, the learned senior counsel for the appellant, submitted that without regard to the nature of employment, once a workman has worked in continuous employment for a period of 240 days his employment could not have been terminated except by complying with the provisions of Section 25F; else he would be deemed to have been retrenched and entitled to the relief of reinstatement. Having heard the learned counsel for the parties we H

are satisfied that the appellant is not entitled to any relief and the view taken by the High Court cannot be found fault with. A

The nature of employment under Jawaharlal Nehru Rozgar Yojna came to be examined by this Court in *Delhi Development Horticulture Employees" Union v. Delhi Administration, Delhi and Ors.*, [1992] 4 SCC 99. The Court found that the scheme under which the petitioners therein were employed B was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and therefore without any income whatsoever. Such schemes were further meant for the rural poor, for the object of the scheme was to start tackling the problem of poverty from that end. The object was not to provide the right C to work as such even to the rural poor - much less to the employed in general. The Union of India had filed a detailed affidavit showing the purpose and working of such schemes, which in their very nature could provide some employment to some people for some time and not an employment to all the employed for all times. The Court held, "if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment D throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not E ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularization, is to frustrate the scheme itself. No Court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, F in the context of such schemes, are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from G introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc." The Court emphasized how a judicial sympathy with H

A such workmen could boomerang upon the purpose of the scheme itself and thereby in the larger context, deny the limited benefit extended by the State to the unemployed which would not be available but for such schemes. The Court held that the petitioners cannot be directed to be regularized on the only ground that they have put in work for 240 or more days, as such directions lead to pernicious consequences. Although there is the Employment B Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower C in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed D 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed, resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed E elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent F and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts."

G Recently, dealing with such scheme or project employees in *S.M. Nilajkar and Ors.* v. *Telecom, District Manager, Karnataka,* JT (2003) 3 SC 436 this Court observed - "It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need H of the moment. The benefit of such schemes and projects is that for the

duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws."

A matter as to termination of employment caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds came up for the consideration of this Court in *Rajendra and Ors.* v. *State of Rajasthan and Ors.*, [1999] 2 SCC 317. It was held that when posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose.

In *Jaipal and Ors.* v. *State of Haryana*, [1988] 3 SCC 354, the employees of the project of adult and non-formal education, a temporary project which was time bound to last till 1990, were held not entitled for regularizing of their services.

There is yet another reason why the appellant cannot be allowed any relief. The appellant had initiated proceedings against Vikas Adhikari Panchayat Samiti alleging himself to be in the employment of Panchayat Samiti. What the High Court has found, upon scrutiny of several documents produced for its consideration and the evidence adduced before the Labour Court, is that the appellant was not in the employment of Panchayat Samiti at all. What was done was that a panel was prepared by the Collector of the District enrolling the unemployed and out of that panel the appellant was taken for work on daily wages for the purpose of the scheme.

The appellant was a daily wager in a scheme and knew it well that his

A employment was co-terminus with the scheme. The post against which the appellant worked has been abolished for want of funds and has ceased to exist. As held above the Panchayat Samiti was not even an employer of the appellant.

The learned Single Judge rightly set aside the award of the Labour
B Court. The Division Bench has not erred in upholding the decision of the learned Single Judge. The appeal is devoid of any merit and liable to be dismissed. It is dismissed accordingly though without any order as to the costs.

K.K.T. Appeal dismissed.