A HARYANA STATE ELECTRONICS DEVELOPMENT CORPORATION LTD.

v.

MAMNI

MAY 2, 2006

B [S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

Industrial Disputes Act, 1947—Section 2(oo)(bb)—Regularization—
Adhoc *employee appointed for specific period—On expiry of that period re-*
C *appointed after a gap of 1-2 days—Held, adoption of such course of action by employer was with an object to defeat the purpose of Act—S.2(oo)(bb) is not attracted—On facts, employee was terminated 14 years back, hence her services cannot be regularized—Hence, compensation of Rs. 25000 awarded—Labour laws—Compensation.*

D **Respondent was appointed on *adhoc* basis initially for a fixed period. On expiry of the fixed period, she was reappointed each time for the same period after leaving a gap of 1-2 days. She absented from work for few days and her services were terminated. She raised industrial dispute. Meanwhile, appellant-Corporation issued an advertisement for the said post but she did not apply.**

E

Labour Court found that the employer had not complied with the condition laid down under Section 25F of Industrial Disputes Act, 1947, hence she was entitled to reinstatement with back wages. Aggrieved appellant filed writ petition before High Court which was dismissed.

F **In appeal to this Court, appellant contended that appointment had been for a fixed period hence the services of respondent could not be regularized.**

Modifying the impugned order by directing payment of compensation, the Court

G **HELD: 1.1. The services of the respondent had been terminated and she had been re-appointed after a gap of one or two days. Such a course of action was adopted by the Appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, is not attracted.**

[642-C]

H

1.2. The services of the respondent was terminated as far back in the year 1992. Even if she is reinstated in her service on an ad hoc basis, her services cannot be regularized. [642-D-E]

Secretary, State of Karnataka and Ors. **v.** *Uma Devi and Grs.*, **(2006) 4 SCALE 197, relied on.**

1.3. In the peculiar facts and circumstances of this case, interests of justice would be sub-served if in the place of reinstatement with back wages, a lump sum amount is directed to be paid by way of compensation. This order is being passed keeping in view the fact that the respondent has not worked since 1992. The post on which she may have been working must have also been filled up. It is wholly unlikely that respondent in the meantime had not been working anywhere else, since the respondent had not placed any material on record to show that she had not been working. [642-F-G]

2. The relief of reinstatement with full back wages is not to be given automatically. Each case must be considered on its own merit. [642-H]

Haryana State Agricultural Marketing Board **v.** *Subash Chand and Anr.*, **[2006] 2 SCC 794, relied on.**

U.P. State Brassware Corporation Ltd. and Anr. **v.** *Udai Narain Pandey,* **JT (2005) 10 SC 344 and** *Nagar Mahapalika (Now Municipal Corportation)* **v.** *State of U.P. and Ors. Civil Appeal of* **(2006) @ SLP (C) No. 23732 of 2004, referred to.**

3. Respondent shall be compensated by payment of a sum of Rs. 25,000/- instead of the order for reinstatement with back wages. [645-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2410 of 2006.

From the Judgment and Order dated 8.3.2004 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 2464/2004.

Arvind Nayar and Kavita Wadia for the Appellant.

Ranbir Singh Yadav, L.D. Sharma and S. Anand Krishna Raj for the Respondent.

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** Leave granted.

The respondent herein was appointed initially for a period of 89 days in the post of Junior Technician (Electronics) on an *ad hoc* basis on or about 31.10.1990. In terms of an offer of appointment made to her, she was appointed therein. The post was purely temporary and her services were liable to be
B terminated without assigning any reason or notice. It was categorically stated that the respondent shall have no claim for regular appointment having worked with the appellant-Corporation on *ad hoc* basis. Her services were extended from time to time. In each of the offer of appointment, indisputably, similar terms and conditions were laid down. The details of such appointments
C are as under :

"Sl. No.	Period	Working days
1.	13.2.91 to 12.5.91	89
2.	14.5.91 to 10.8.91	89
3.	13.8.91 to 9.11.91	89
4.	11.11.91 to 7.2.92	89"

D

It is not in dispute that she remained absent for 19 days during the
E period 20th January, 1992 and 7th February, 1992 as also for a period of 11 days during the period 17.3.1992 to 27.3.1992. Her services were terminated on 7.8.1992. She raised an industrial dispute, whereupon the State of Punjab in exercise of its power under Section 10(1)(c) of Industrial Disputes Act, 1947 referred the said dispute for adjudication of the Labour Court. In the meanwhile,
F the appellant Corporation has issued an advertisement for filling up some posts on regular basis including the said post of Junior Technician. The respondent, however, did not apply pursuant to the said advertisement.

Before the Labour Court, the appellant herein has raised a plea that the appointment of the respondent being *ad hoc* in nature and furthermore on a
G contract basis as envisaged under Section 2(oo)(bb) of the Industrial Disputes Act, her services were liable to be terminated in terms thereof. By reason of the impugned Award dated 21.5.2003, the Labour Court directed reinstatement of the respondent with back wages on the premise that she had completed 240 days of work during a period of twelve months immediately preceding the date of termination of her services and in view of the fact that the conditions
H laid down under Section 25F of the Industrial Disputes Act had not been

complied with by the Appellant. A

The Appellant-Corporation herein, being aggrieved by the said Award, filed a Writ Petition before the Punjab & Haryana High Court which was numbered as W.P. (C) No. 2464 of 2004. By reason of the impugned judgment, the said Writ Petition has been dismissed. B

Mr. Arvind Nayyar, the learned counsel appearing on behalf of the appellant submitted that having regard to the fact that the services of the respondent could not have been directed to be regularized in the light of the judgments of this Court and furthermore in view of the fact that her appointment had been for a fixed period of 89 days, the impugned judgment cannot be sustained. C

Mr. Ranvir Singh Yadav, learned counsel appearing for the respondent, on the other hand, urged that the respondent having completed 240 days of service within a period of twelve months preceding the date of her termination and in view of the fact that no compensation had been paid as provided in Section 25-F of the Industrial Disputes Act; the Labour Court and consequently the High Court has rightly directed her reinstatement with full back wages. D

Section 2 (oo) (bb) of the Industrial Disputes Act reads as under:-

> "termination of the service of the workman as a result of the non-removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein." E

The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be *bona fide*. The High Court rejected the contention raised on behalf of the appellant herein stating : F

> "...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent-workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent - workman for a specified period, as alleged, but was to G H

A defeat the rights available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner - management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice..."

A finding of fact was arrived at that her services were terminated on B regular basis but she was re-appointed after a gap of one or two days. In that view of the matter, the Labour Court or the High Court cannot be said to have committed any illegality.

In this case the services of the respondent had been terminated on a regular basis and she had been re-appointed after a gap of one or two days. C Such a course of action was adopted by the Appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case.

However, indisputably, the respondent was appointed on an *ad hoc* D basis. She, although qualified to hold the post of Junior Technician, when the advertisement had been issued for filling up the said post, did not apply therefor. The services of the respondent was terminated as far back as in the year 1992. Even if she is reinstated in her service on an *ad hoc* basis, her services cannot be regularized in view of a recent Constitution Bench decision of this Court in *Secretary, State of Karnataka & Ors.* v. *Uma Devi & Ors.*, E (2006) 4 SCALE 197. Furthermore, she had absented herself for a period of 19 days from 20.1.1992 to 7.2.1992 and for a period of 11 days from 17.2.1992 to 27.2.1992.

We, therefore, are of the view that in the peculiar facts and circumstances of this case, interests of justice would be sub-served if in the place of F reinstatement with back wages, a lump sum amount is directed to be paid by way of compensation. This order is being passed keeping in view the fact that the respondent has not worked since 1992. The post on which she may have been working must have also been filled up.

It is wholly unlikely that respondent in the meantime had not been G working anywhere else, since the respondent had not placed any material on record to show that she had not been working.

This Court in a number of decisions has categorically held that the relief of reinstatement with full back wages is not to be given automatically. Each H case must be considered on its own merit.

In *U.P. State Brassware Corporation Ltd. & Anr.*. v. *Udai Narain Pandey,* JT (2005) 10 SC 344, it was observed:- A

"Order VII, Rule 7 of the Code of Civil Procedure confers power upon the Court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act. Section 11-A of the Industrial Disputes Act B empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen."

It was further opined:

"Industrial Courts while adjudicating on disputes between the C management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within D its purview giving a person what is due to him and not what can be given to him in law.

A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance. E

The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident. F

In *Hindustan Motors Ltd.* v. *Tapan Kumar Bhattacharya & Anr.*, this Court noticed *Raj Kumar* (supra) and *Hindustan Tin Works* (supra) but held:

"As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence G whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter H

A in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement..."

B This Court held:

"It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to
C raise the aforementioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman."

[See also *Haryana State Agriculatural Marketing Board* v. *Subhash Chand & Anr.*, [2006] 2 SCC 794].

D

In *Nagar Mahapalika (Now Municipal Corporation)* v. *State of U.P. & Ors.* [Civil Appeal of 2006 @ SLP (C) No. 23732 of 2004], disposed of this date, this Court held that :

"In *Nilajkar* (supra), this Court cannot be said to have laid down
E a law having universal application. In that case also backwages had been denied by the learned Single Judge of the High Court which order was held to be just and reasonable. Therein, the question which arose was whether in fact the Appellants therein were appointed in a project work.

F The said decision has been distinguished by this Court in various decisions including *Executive Engineer, ZP Engg. Divn. and Anr.* v. *Digambara Rao and Ors.*, [2004] 8 SCC 262 which in turn has been followed in a large number of decisions.

However, there cannot be any dispute that provisions of Section
G 6-N of the U.P. Industrial Disputes Act have not been complied with. We are, however, of the opinion that in stead and in place of issuing a direction for reinstatement of service, interests of justice shall be sub-served if compensation of Rs.30,000/- per person is directed to be paid.

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It goes without saying that the Respondents would be entitled to wages and other remunerations in terms of the interim order passed by the High Court so long they have actually worked. We, furthermore, hope and trust that in all future appointments, the Appellant shall strictly follow the provisions of the Adhiniyam and the Rules." A

In view of the settled legal position, as noticed hereinbefore, we modify the impugned order by directing that the respondent shall be compensated by payment of a sum of Rs.25,000/- in stead of the order for reinstatement with back wages. B

The appeal is allowed to the aforementioned extent. No costs. C

D.G. Appeal allowed.