

Court No. - 6

Case :- WRIT - C No. - 1003018 of 2011

Petitioner :- Engineer-In-Chief Irrigation Dept.Lucknow And Ors.

Respondent :- Shiv Nath S/O Sri Lok Ram

Counsel for Petitioner :- Chief Standing Counsel

Hon'ble Alok Mathur,J.

1. Heard learned Standing Counsel for petitioners.
2. The State has preferred present writ petition being aggrieved by the award dated 18.07.2003 passed by the Industrial Tribunal-II, Lucknow in Case No. 279/2001 (Chief Engineer, Irrigation Department U.P., Lucknow and Ors. Vs. Shiv Nath).
3. Notices were issued to the respondents and the service has been deemed to be sufficient.
4. Despite service, no one has appeared on behalf of respondent.
5. Learned counsel for petitioner has submitted that respondent-workman was engaged as daily wage labourer for temporary work in the Irrigation Department due to exigencies of work between 15.07.1986 to 31.12.1991. He worked in the Department from 01.12.1987 to 31.12.1987, 01.10.1988 to 31.10.1988 and and 01.02.1991 to 31.12.1991 and was paid his wages and subsequently his services were disengaged as his services were no longer required.
6. On his disengagement, he has approached Dy. Labour Commissioner, Lucknow on 1.08.1999 and his matter was referred for conciliation. The conciliation proceedings had failed and consequently a reference was made to the Industrial Tribunal to adjudicate his case and the issues referred was as to whether the retrenchment of Shri Shiv Nath w.e.f. 01.01.1992 is valid and is in accordance with law and, if not, the compensation including legal dues to which he is entitled.
7. According to the claim filed by the workman before the Industrial Tribunal, it was stated that he was engaged as a Chowkidar/Beldar on temporary basis and worked till 31.12.1991 and he was disengaged w.e.f. 01.01.1992 orally by the Junior Engineer and was not paid any pay in lieu of notice or retrenchment compensation, accordingly he was entitled to be reinstated in service with all consequential benefits in view of the provisions contained in Section 6(N) of U.P. Industrial Disputes Act, 1947 as well as compensation for his illegal termination. In the claim, he has also stated that he worked for more than 240 days in one calendar year and consequently provisions of Section 6(N) were complied with and therefore, his retrenchment is illegal and he was liable to be reinstated and paid salary.

8. The said claim was opposed by the petitioner who admitted that he had worked on temporary basis at canal in the Irrigation Division, Unnao and payment was also made to him but submitted that he was not a regular employee and was engaged only when work was available and consequently prayed that his claim may be rejected.

9. The Industrial Tribunal while allowing the claim preferred by the workman had taken into account the fact that the petitioner has admitted that workmen was in their employment and was working in the Irrigation Department from 1987 to 1991 as a daily wages labourer.

10. The workman on the other hand had alleged that he had worked from 15.07.1986 to 31.12.1991 continuously and during this period he was never laid off and his services were illegally terminated on 01.01.1992. He has further stated that Kutti Lal, Rajesh Kumar, Ramesh Chandra, Om Prakah, Chhatrapal and other workmen who were junior to him have been retained by the petitioner while he has been retrenched and accordingly submitted that there was clear violation of provision of Section 6(N) of U.P. Industrial Disputes Act.

11. The workman has also produced a copy of muster roll which indicated that he had worked for 332 days in the year 1991. It is in the aforesaid facts that the Labour Court came to the conclusion that that employees had worked for more than 240 days in a calendar year preceeding the date of his termination and prior to his termination he was not given notice or wages in lieu of notice and consequently there was violation of principles of provisions of Section 6(N) of U.P. Industrial Disputes Act. The Tribunal has also considered that similarly placed employee, namely, Krishan Pal Yadav had approached this Court by filing a writ petition being Writ Petition No. 1440 (SS) of 1999 wherein an interim order was passed giving him benefit from 18.08.1999 onwards and he was also directed to be reinstated in service and accordingly held that the petitioner would also be liable to be given benefits from 18.08.1999 onwards accordingly, the claim was allowed and direction for reinstatement was passed w.e.f. 18.08.1999 and the petitioner was directed to pay daily-wages from 18.08.1999 till 30 days after the publication of the award of 25% of the wages subsequent to which it was assumed that he would be reinstated and full wages he was entitled to be paid and also was given benefit of continuity of services.

12. Learned counsel for petitioner while assailing the order passed by the Tribunal has only assailed the impugned order on the ground that Irrigation Department is not an "Industry" as per the law laid down by the Supreme Court in the case of **Executive Engineer, State of Karnataka Vs. K. Somasetty and others reported in 1997 (5) SCC 43.**

13. Considering the argument of the learned Standing Counsel it is noticed that this aspect is no longer in res-integra as per the judgment of this Court passed in the case of **Des Raj Etc. Vs. State of Punjab and others reported in AIR 1988 SC** held that Irrigation Department has been held to be an "Industry" under Section 2(j) of the Industrial Disputes Act.

14. Before proceeding further, it is necessary to refer the law laid in various authorities as to the applicability of the provisions of the Industrial Disputes Act, 1947 on the Irrigation Department.

15. This Court in the case of **State of U.P. through Secretary Irrigation Vs. Mohd Rais reported in 2021 (169) FLR 520**, in paragraphs 5, 7, 8, 9, 10 and 11, has held as under:

"5. Learned counsel appearing on behalf of opposite party no.1 refuting the submission advanced by learned counsel for petitioner has in turn placed reliance upon judgment rendered by Hon'ble the Supreme Court in the case of Des Raj vs. State of Punjab & Ors. reported in AIR 1988 Supreme Court 1182 to submit that a Government Department such as the Irrigation Department has already been held to come within the purview of term 'Industry' but the subsequent judgment rendered in the case of K. Soma Setty (supra) has been passed without noticing the aforesaid two judgments, which should therefore prevail. Learned counsel has also relied upon judgment rendered by Hon'ble the Supreme Court in the case of Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation reported in AIR 1986 Supreme Court 458 to submit that for the purposes of calculation of 240 days of service, weekends and other gazetted holidays are required to be taken into account. Learned counsel has also relied upon a Full Bench Decision of this Court rendered in Ganga Saran vs. Civil Judge, Hapur reported in AIR 1991 Allahabad 114 to submit that in case of a conflict between judgments of Hon'ble Supreme Court consisting of equal authorities, the concerned High Court must follow judgment which appears to lay down the law elaborately and accurately irrespective of time line. Learned counsel also placed reliance on a Single Judge judgment rendered by High Court of Bombay in Executive Engineer, Yavantmal Medium Project Division & Anrs. vs. Anant S/o Yadao Murate & Another reported in 1997 ILLJ 91 wherein after considering the contradictory judgments of Hon'ble Supreme Court regarding Irrigation Department being an 'Industry' has followed the judgment rendered in the case of Des Raj (supra).

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7. As has been indicated hereinabove, the Hon'ble Supreme Court in the case of Des Raj (supra) has held that an Irrigation Department of particular Government to be an Industry in terms of the Act of 1947. The said judgment has taken into account various other judgments rendered by Hon'ble the Supreme Court particularly a Constitution Bench judgment rendered in Bangalore Water Supply and Sewerage Board vs. A. Rajappa, reported in (1978)2 SCC 213. On the contrary, the subsequent judgment rendered by Hon'ble Supreme Court in case of K. Soma Setty (supra) has not adverted to the aforesaid judgments of Des Raj (supra) and Bangalore Water Supply and Sewerage Board (supra).

8. Upon perusal of Judgment rendered in the case of Desh Raj (supra) as compared to judgment rendered in the case of K. Soma Setty (supra), it is apparent that in the case of Desh Raj (supra) Irrigation Department has been held to come within the definition of Industry whereas judgment of K. Soma Setty holds otherwise. As such, there is clear conflict in the two judgments which are of Coordinate Bench.

9. The proposition of law required to be followed in conflicting judgments rendered by Hon'ble the Supreme Court by Benches of Coordinate strength has been discussed in the Full Bench of this Court in Ganga Saran (supra). The Full Bench after considering the relevant aspect has

held as follows:

" 7. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case there is a conflict between the judgments of Supreme Court consisting of equal authorities, incidence of time is not a relevant factor and the High Court must follow the judgment which appears to lay down law elaborately and accurately.

8. Similar situation arose before a Full Bench of Punjab and Haryana High Court in the case of *M/s Indo Swiss Time Limited, Dundahera, vs. Umrao*, AIR 1981 Punj & Har 213. What the Full Bench in the said case held is extracted below (at pp. 219-220 of AIR) : Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the Superior Court are earlier later is a consideration which appears to me as hardly relevant."

This decision was followed by the Bombay High Court in the case of *Special Land Acquisition Officer vs. Municipal Corporation*, AIR 1988 Bombay 9. The majority of Judges in the Full Bench held that if there was a conflict between the two decisions of equal benches which cannot possibly reconcile, the courts must follow the judgment which appear to them to state the law accurately and elaborately. We are in respectful agreement with the view expressed by the Full Bench of Punjab & Haryana High Court in the case of *M/s Indo Swiss Time Limited v. Umrao*, (AIR 1981 Punj & Har 213) (*Supra*) especially when the Supreme Court while deciding *Qamaruddin's case* (1990 All WC 308) (*Supra*) did not notice the U.P. amendment to S.115, C.P.C. and earlier decision of the Supreme Court."

16. The aforesaid aspect has also been dealt with by a learned Single Judge of the High Court of Bombay in which judgment rendered by Hon'ble the Supreme Court in the case of **Des Raj Etc. Vs. State of Punjba and others reported in AIR 1988 SC** has been followed:

"13. On considering all the concepts of industry and after reviewing the various tests which need not be repeated, as the tests were laid down in *Bangalore Water Supply case* (*supra*). The concept of sovereign and regal function was explained in *Chief Conservator of Forests* (*supra*). The Apex Court in para 13 specifically rejected an argument that welfare activities partake sovereign functions on the ground that if such a view was taken it would be eroding the view taken by it in *Bangalore Water Supply's case*. While observing that welfare activities partake sovereign functions the

Apex Court did not notice this in *Sub-Divisional Inspector of Post, Vaikam and Other (supra)*. Therefore, considering the various precedents of the Apex Court itself it is clear that the law declared by the Apex Court is that welfare activities do not necessarily partake sovereign functions. In *Executive Engineer, State of Karnataka* the reliance was placed on the judgment in the case of *Union of India v. Jai Narain Singh (supra)*. In *Union of India v. Jai Narain Singh*, the Apex Court has merely noted that the Central Ground Water Board is not an Industry. It is not possible to discern from that judgment as to what were the reasons for the Apex Court to so hold. The other judgment relied on is that of *State of Himachal Pradesh v. Suresh Kumar Varma & Anr. (supra)*. On a perusal of the fact and the law laid down it does not seem that the issue as to whether a particular department was an industry or not was in issue. What was in issue was whether the work charged employees who perform duty of transitory nature were appointed to posts and their appointments were on daily wage basis in an appointment to a post. The Apex Court therein noted that such appointments were not appointments to the posts and, therefore, no directions could have been given to re-engage them in any work or appoint them against existing vacancies. Thus the two judgments relied upon by the Apex Court to arrive at the conclusion arrived at in *Executive Engineer, State of Karnataka (supra)*, nowhere have laid down the tests to hold as to why Irrigation Department is to be excluded from the definition of industry. As pointed out earlier, even the case of *Sub Divisional Inspector of Post, Vaikam and Others* was considered by the Apex Court in *Physical Research Laboratory* and explained the same in paragraph 10 of the judgment. After that, it proceeded to apply the tests as laid down in *Bangalore Water Supply*. In the case of *Des Raj v. State of Punjab (supra)* the Apex Court had considered the tests laid down in various earlier judgments of the Apex Court itself, culminating in the judgment in *Bangalore Water Supply (supra)* and thereafter had arrived at a conclusion that the Irrigation Department falls within the definition of Industry within the meaning of Section 2(j) of the I.D. Act. I am, therefore, of the considered opinion that the view laid down in *Des Raj's* case is the better in point of law and hence it is the view in *Des Raj's* case which will have to be followed. Once it is so held and as I have already set out earlier the work of the Irrigation Department of the State of Punjab and the material placed before this Court including the written submissions filed on behalf of the petitioners show that the projects undertaken by the irrigation department of the State of Maharashtra is discharging the same or similar functions as the Irrigation Department of the State of Punjab. It, therefore, follows that the projects of the Irrigation Department or work connected with that of the State of Maharashtra, on the same tests as applied by the Apex Court in *Des Raj's* case would fall within the definition of an industry for the purpose of Section 2(j) of the I.D. Act."

17. Upon applicability of said factors to the present case, it is clear that the judgment rendered by Hon'ble the Supreme Court in **Des Raj (supra)** has elaborately dealt with the question as to whether Irrigation Department of the Government would come within the definition of Industry or not. After considering the Constitution Bench Judgment of Hon'ble Supreme Court rendered in **Bangalore Water Supply and Sewerage Board (supra)**, the Hon'ble Supreme Court has reached a definite conclusion that Irrigation Department of the Government would come within the definition of Industry."

18. The Supreme Court in the case of **The State of Uttar Pradesh and**

others Vs. Uttam Singh, reported in AIR 2021 Supreme Court 3909, in paragraphs 10 and 11, has held as under:

"10. We have also taken note of the fact that during his 13 long years of employment and before that having battled the appellants for the period of 6 years to get his dues, the father of the respondent was also transferred from one department to the other, normally an aspect which would be associated with a person who had a regular employment. The most significant aspect is that had the father of the respondent not been considered a regular appointee, there would be no occasion for the Department to volunteer his services to the State Election Commission to perform election duties, which could have been done only by a Government employee, as is specified under Section 159 of the Representation of the People Act, 1950 ("Staff of certain authorities to be made available for election work").

11. The present case is thus one which is peculiar in its given factual scenario which we have discussed above and thus for all practical purposes, it is a case of an appointment against a regular vacancy. The respondent's father was treated as a regular employee by the aforesaid conduct of the appellants even though he was labelled as a Part Time tubewell operator."

19. This Court in the case of **Chairman, Town Area & another Vs. State of U.P. and others, reported in 2013 (11) ADJ 197**, in paragraph 14 held as under:

"14. The submission of learned counsel for the petitioner that in respect of true meaning and import of the expression 'Industry' defined under Industrial Disputes Act, the correctness of decision of Apex Court rendered in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa & others, AIR 1978 S.C. 548 has been doubted by Apex Court in Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and others, (1998) 3 S.C.C. 259 and further in case of State of U.P. Vs. Jai Bir Singh (2005) 5 S.C.C. Page 1 and decision of the Apex Court rendered in Bangalore Water Supply case has been referred to the larger Bench, also does not make any difference for the reason that the learned counsel for the petitioner could not point out the final decision rendered by larger Constitution Bench of the Apex Court in respect of the aforesaid references, therefore, I have no hesitation to hold that earlier view taken by the Apex Court is still good law and cannot be held to be detracted by Apex Court itself by now. Accordingly, no different opinion can be given by this court in this regard."

20. The submission of the learned counsel for the respondent-workman, therefore, is that once the Supreme Court as well as this Court have already held in the aforesaid authorities that Irrigation Department and also the departments of the like nature depending upon the services rendered by the said departments, shall be covered by definition of "Industry" and, further, once the respondent was treated as an employee in the petitioner establishment, no error can be pointed out in adjudication of the dispute by the Labour Court and the provisions of U.P. Industrial Disputes Act, 1947 were fully applicable.

21. Further, Hon'ble the Supreme Court in the case of **Des Raj Etc. Vs. State of Punjab and others reported in AIR 1988 SC** had considered

the tests laid down in various earlier judgments of the Apex Court itself, culminating in the judgment in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, reported in 1978(2) SCC 213** and thereafter had arrived at a conclusion that the Irrigation Department falls within the definition of Industry within the meaning of Section 2(j) of the I.D. Act. It was held that the view taken down in Des Raj's case was the better in point of law and hence it is the view in **Des Raj's** case which was directed to be followed. Once it was so held and also that the work of the Irrigation Department of the State of Punjab and the material placed before the Supreme Court including the written submissions filed on behalf of the concerned petitioners that the irrigation department of the State of Maharashtra was discharging the same or similar functions as the Irrigation Department of the State of Punjab, it was held that the projects of the Irrigation Department or work connected with that of the State of Maharashtra, on the same tests as applied by the Apex Court in **Des Raj's** case would fall within the definition of an industry for the purpose of Section 2(j) of the I.D. Act.

22. The Hon'ble Supreme Court in the case of **Executive Engineer, State of Karnataka Vs. K. Somasetty** had relied upon the case of **Union of India Vs. Jai Narain Singh, (1995) Supp 4 672**, to hold that Irrigation Department is not an "Industry". No reasons were ascribed for coming to the said conclusion, as has also observed by the Bombay High Court in the case of **Special Land Acquisition Officer Vs. Municipal Corporation, AIR 1988 Bom 9** and relied upon the case of **Des Raj**. This Court is in agreement with the said observations on this count and hence hold that the Irrigation Department is an "Industry" within the meaning of Section 2(f) of the U.P. Industrial Disputes Act, 1947.

23. It is noticed that undisputedly, the workmen has worked along with petitioner from from 15.07.1986 to 31.12.1991 and according to the muster roll produced by him before the Industrial Tribunal, he had worked for 332 days in 1991. There is no denial of the fact that the provisions of Section 6(N) of Industrial Disputes Act were not complied with by the petitioner inasmuch as neither notice was given to him nor salary in lieu of notice and consequently there was gross violation of provisions of Section 6(N).

24. In view of above discussions, the contention of the State to the effect that Irrigation Department does not fall within the definition of "Industry" or that provisions of Act of 1947 are not applicable, does not have any force and is hereby rejected. Even, the Labour Court, in the impugned award has also given the same interpretation after relying upon the judgments in the case of Des Raj and etc. (supra) and other authorities. I do not find any error in the view taken by Tribunal necessitating interference by this Court under Article 227 of the Constitution of India.

25. The writ petition is bereft of merits and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 4.1.2024

Ravi/