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**(2000) 09 MP CK 0045**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 50 of 1996**

Pramod Pandey

APPELLANT

Vs

Regional Director, ESI Corporation

RESPONDENT

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**Date of Decision : 26-09-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Employees State Insurance Act, 1948 — Section 17(3)  
Industrial Disputes Act, 1947 — Section 2, 25F

**Citation :** (2001) 1 JLJ 206 : (2002) 4 LLJ 595 : (2001) 1 MPLJ 550

**Hon'ble Judges :** S.K. Kulshrestha, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.K.Pandey, J.

The petitioners, in these petitions, have challenged the Award dated August 4, 1995 of the Central Government Industrial Tribunal-Cum- Labour Court, Jabalpur, incase Reference No. CGIT/LC (R) (221)/1987, by which the Tribunal has held that the action of the Management, the Employees" State Insurance Corporation, in terminating the services of the workmen was legal and justified.

In connection with the termination of employment of 28 workmen including the petitioners, following Industrial Dispute was referred to the Tribunal for adjudication:

"Whether the action of the management of Employees" State Insurance Corporation, M.P. Region, Indore in terminating 28 workmen (as shown in the Annexure) from service vide their office order 128 of 1985 issued under Sr. No. 18-A-22/12/2/85- Esthapna, dated April 1, 1985 is legal and justified? If not, to what relief are the concerned workmen entitled ?"

The petitioners were amongst the 28 terminated employees who had been appointed as ad hoc LDC by the Management for a period of 3 months. The

contract was extended from time to time after breaks. It was not disputed that during the subsistence of the contract the Corporation had made available to the petitioners repeated opportunities to pass the test prescribed under the Regulations for regular appointment but the petitioners had failed to clear the same and eventually the contract was not extended on eligible persons becoming available to the Corporation for appointment in accordance with the Rules. The case of the petitioners before the Tribunal was that they had completed more than 240 days in each calendar year continuously for 3 years and had performed duties like the regular employees on clear vacancies but still their services had been terminated by a common order dated April 1, 1985. The petitioners, therefore, had challenged the termination on the ground that the management was guilty of unfair labour practice in introducing artificial breaks in their service during 1982 to 1985 and the termination was in violation of the provisions of Section 25F of the Industrial Disputes Act. It was primarily on the above two grounds that the petitioners sought relief of reinstatement with full back wages.

On behalf of the Management, statement of claim was filed before the Tribunal of which a copy has been submitted as Annexure-R/1 to the Return. In addition, affidavit of Shri J.P. Vishwakarma, Assistant Regional Director of the Employees' State Insurance Corporation, Indore, was filed. According to the case of the Management, the workmen not being members of the Union, the Union was not entitled to raise any industrial dispute concerning their service. It was further pointed out that the Corporation was established for enforcing the provisions of the Employees' State Insurance Act, 1948 and the Rules framed thereunder and was not engaged in any commercial or business activity with the result, it was not an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act. It was further pointed out that the petitioners had been initially appointed on ad hoc basis and continued in the same capacity by orders of extension passed from time to time and since their ad hoc appointment had been made only by way of stop-gap arrangement pending regular selection of candidates on the post and the petitioners had failed to pass the test as prescribed under the Regulations though several opportunities were made available to them, on selection of the eligible candidates in accordance with the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, their ad hoc appointment was not extended. It was further averred that since the appointment of the petitioners was on contract of specified duration, termination of their service did not constitute "retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act, the same being excluded from the purview by Clause (bb) and the provisions of Section 25F of the Act were, therefore, not attracted. On these averments, the Respondent-Corporation contended that the termination did not suffer from any illegality whatsoever.

Before the Tribunal, the management examined Shri J.P. Vishwakarma but no evidence was adduced on behalf of the workmen. The documents filed by the workmen as Ex. W/1 to Ex. W/6 were, however, admitted by the Management. On appraisal of the evidence brought on record by the parties, the Tribunal, in

the light of the judgment of the Supreme Court in *Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.*, held that the persons appointed on ad hoc basis did not acquire any right under the Industrial Disputes Act on completion of 240 days to seek regularisation and the provisions of Section 25F were not attracted. It was also observed that the nature of the appointment being covered by Clause (bb) of Section 2(oo), the termination did not amount to retrenchment. The allegation of unfair labour practice was also negated by the Tribunal on the ground that breaks between the contracts had not been artificially introduced with a view to deprive the workmen of any right accruing to them otherwise.

Learned counsel for the parties have canvassed the same contentions before this Court. The first contention of the learned counsel for the petitioners is that the petitioners had been appointed after having been sponsored by the employment exchange and although the appointment was initially for a period of three months on ad hoc basis, since it was continued for 3 years and the breaks had been artificially introduced, it was not an appointment falling within Clause (bb) of Section 2(oo) of the Industrial Disputes Act and, therefore, it amounted to retrenchment u/s 2(oo) and since it was not disputed that provisions of Section 25F of the Industrial Disputes Act were not complied with, the Tribunal erred in not directing reinstatement of the petitioners with full back wages. Section 2(oo) defines "retrenchment" as follows:

"2(oo): "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal 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; or

(c) termination of the service of a workman on the ground of continued ill-health;"

From the definition of "retrenchment" hereinabove reproduced, it is clear- that termination of service of the workman as result of the non-renewal of contract of employment between the employer and the workman concerned on the expiry or such contract being terminated under a stipulation in that behalf contained therein is not included within the definition of retrenchment. Learned counsel for the petitioners has referred to the decision of this Court in *Chief Municipal Officer Vs. Presiding Officer, Labour Court and Others*, and contended that whether or

not initial appointment is valid or the appointment is not in accordance with the rules is not relevant as the definition u/s 2(oo) is comprehensive enough to include all types of termination of service which are not excepted under the Section . From the decision referred to by the learned counsel. It is clear that the appointments which are excepted are not covered within the definition of retrenchment and the case of the employer in the present case is that the ad hoc employment having been made specifically on a contract of specified duration, it was an employment excluded from the definition of retrenchment, the same being covered under Clause (bb) of the Act. The learned counsel has also referred to the decision in Ramkishan Vs. Samrat Ashok Technical Institute, that even with intermittent breaks, once an employee completes 240 days of employment, the right accrued cannot be taken away on the foundation of clause (bb) on the ground that last renewal contains clause with regard to automatic termination of his service on the expiry of the period stated in the contract. Reference has also been made to the decision of the Supreme Court in H.D. Singh Vs. Reserve Bank of India and Others, in which the Apex Court has held that confidential circular directing the officers that the workman should not be engaged continuously but should, as far as possible, be offered work on rotation basis was an unfair labour practice under item 10 in the V Schedule to the Industrial Disputes Act.

In the case in hand, it is noticed from the affidavit filed before the Tribunal that the petitioners had been granted opportunity to clear the prescribed competitive examination on July 4, 1982, March 13, 1983, August 12, 1984 and September 29, 1985 but still they had failed to clear the same. In the admitted facts of the present case, therefore, it is clear that renewals had been necessitated only to facilitate the petitioners to clear the prescribed examination but still the petitioners failed to do so. It is only where an act depicts an intention to engage in the system of making ad hoc appointments without there being any real intention to fill up the posts in accordance with the Regulations with the oblique motive to avoid any obligation or liability arising from the permanent status which the workmen may otherwise acquire that the occasion would arise to consider the same as an unfair labour practice. In the present case, the regular appointment was permissible on passing the prescribed examination for which several opportunities had been extended to the ad hoc employees. The ad hoc appointment had not been made with a view to avoid making of regular appointments and the same was only by way of stop-gap arrangement pending regular appointment in accordance with the Regulations. The decisions in Ram Krishna Sharma and H.D. Singh (supra) have, thus, no bearing on the facts of the present case. The appointment was neither in pursuance of any direction to make ad hoc appointments with a view to avoid any liability arising from the permanent appointment on the posts nor the breaks had been artificially introduced. The petitioners each time failed to clear the examination and meanwhile other eligible candidates who cleared the examination in which the petitioners had also competed, became available for appointment. It was in this

background that petitioners could not be continued any further. Learned counsel for the petitioners has also referred to the decision of the Supreme Court in Santosh Gupta Vs. State Bank of Patiala, that the discharge of the workmen on failure to pass the test was also retrenchment within the meaning of Section 2(oo) and attracted the requirement of Section 25F but the decision does not help the petitioners as subsequently Clause (bb) was introduced w.e.f. August 18, 1984 excluding termination of service as a result of the non-renewal of the contract of employment on its expiry from the purview of retrenchment.

Learned counsel for the petitioners has heavily relied upon the decision of the Bombay High Court in Dilip Hanumantrao Shirke and others Vs. Zilla Parishad Yavatmal and others, in support of the contention that if the employer resorts to contractual employment as a device to simply take it out of the principal Clause (oo) irrespective of the fact that the work continues and the nature of the duties which the workman was performing continue to exist, such contractual engagement will have to be decided on the anvil of fairness, propriety and bonafides. The petitioners were employed by the Corporation not in connection with any particular work but only on ad hoc basis pending appointments on the posts in accordance with the Regulations of the Corporation. The fairness and bona fides of the Corporation are patent from the fact that the Corporation had also displayed its full anxiety for continuance of the petitioners by providing successive opportunities to them to pass the test prescribed under the Regulations for the post in question. The petitioners appeared time and again but failed to clear the same. Reference has also been made to the decision in M.P. Bank Karamchari Sangh v. Syndicate Bank 1997 III LLJ 536 ) but the said case did not relate to the question of necessity of passing a test for regular employment. In the said case, the workman had continued, for a period exceeding 240 days in a block of 12 months in connection with the work which had not come to an end. Learned counsel has further placed reliance on the judgment dated April 16, 1998 of this Court in W.P. No. 3982/1995 wherein the case of employment which had lasted for a period exceeding one year and the provisions of Section 25F were not complied with, reinstatement directed by the Labour Court was maintained. In the said case, this Court was not dealing with any plea of the employer that the appointment had been made on contract of a specified duration and, therefore, the case is distinguishable on facts.

In the present case, there is nothing to suggest that the power under Clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise. The employer throughout acted in the interest of the employees to afford them every opportunity to pass the prescribed examination for regular appointment but the petitioners failed every time. Therefore, in view of the decision of the Supreme Court in State of Rajasthan and others Vs. Rameshwar Lal Gahlot, , the termination cannot be held to be illegal on non-compliance of the provisions of Section 25F.

At this stage, it is also necessary to deal with an ancillary contention of the

petitioners. The petitioners have referred to Section 17(3) of the Employees' State Insurance Act, 1948 in support of their contention that their engagement having lasted for more than a year, they would be deemed to have become the regular employees of the Corporation. Attention has been invited to the decision of the Delhi High Court in *Dr. G.P. Sarabai and Ors. v. Union of India and Ors.* 1983 Lab IC 910. Sub-section (3) of Section 17 provides that every appointment to posts corresponding to Class I and Class II posts under Central Government shall be made in consultation with the Union Public Service Commission. The proviso to sub-section (3), however, permits "officiating or temporary appointments for an aggregate period not exceeding one year. From the language of sub-section (3) of Section 17 itself, it is clear that the provision applies to the posts corresponding to Class I and Class II posts under Central Government and it has not been shown that the post of LDC on which the petitioners had been appointed was a post corresponding to Class I or Class II posts. Even otherwise, in the case relied upon by the learned counsel for the petitioners, the incumbent had been continued beyond the period of one year with the concurrence of the Union Public Service Commission and because the limitation was held to be binding on the Commission also, it was held that the appointment could not have been terminated.

Learned counsel for the petitioners have also submitted that the provisions of Clause (bb) will have no application in the case of the petitioners because at the time when the petitioners were first employed on ad hoc basis on contract of three months, the said clause was not on the statute book. Learned counsel for the Respondent-Corporation has pointed out that it is only at the time when the employer is considering termination of the service that it is necessary to see whether the termination would constitute retrenchment within the meaning of Section 2(oo). Clause (bb) of Section 2 was brought on the book w.e.f. August 18, 1984 by Act No. 49 of 1984 and, therefore, at the time when the services of the petitioners terminated on the expiry of the contract, the definition of the retrenchment had to be seen in the light of Clause (bb). Since termination on the expiry of the contract did not amount to retrenchment, the provisions contained in Chapter V-A were not attracted and it was, therefore, not necessary to comply with the requirement contained in Section 25F of the Act. Learned counsel for the petitioners has referred to the decision of the Supreme Court in *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, and also to the decision in *Uptron India Limited Vs. Shammi Bhan and Another*, . Learned counsel has contended that where the appointment is purely on ad hoc basis and is contractual and has come to an end by efflux of time, the person holding such post can have no right to continue on the post even if the person is continuing from time to time on ad hoc basis for more than a year. In *Uptron India Limited* (supra) their Lordships have held that what Clause (bb) means is that there should have been a contract of employment for a fixed term between the employer and the workmen and if such contract, on the expiry of its original period, is not renewed and the services are terminated as a consequence of

efflux of the period, it would not amount to retrenchment. The question whether or not the termination would amount to retrenchment, is to be seen in the light of the provisions applicable as on the date of termination. Since it is not disputed that on the date of the termination Clause (bb) had already been inserted by amendment to except from the meaning of "retrenchment", termination of the service of the workmen as result of the non-renewal of the contract of employment, the provisions of Chapter V-A of the Act were not attracted.

Learned counsel for the petitioners have further submitted that not only that the employer has to show that the termination of the service was legal, it is further necessary to demonstrate that it was justified. Reference has been made to the decision of the Supreme Court in *Union of India v. Prafulla Kumar*, (1983) 1 LLJ 304 and to the decision of the High Court of Gujarat in *Surat Manila Nagrik Sahakari Bank Ltd. v. Mamtaben Mahendrabhai Joshi* 2002 (2) GLR 603. As held by the Apex Court, when the reference is comprehensive enough to cover both the concepts, legality and justification, it is within the jurisdiction of the Tribunal to investigate whether the retrenchment is legal and, if legal, whether it is also justified and that the terms of reference should be construed liberally and the dispute should be determined in the context of social justice. In the facts of the present case, the justification of termination is so obvious that it requires no further probe into the matter. It has already been observed that the termination after the efflux of the period of the contract which was not extended on account of failure of the petitioners to pass the examination did not suffer from any arbitrariness and the renewal of the period from time to time did not amount to any unfair labour practice or victimisation. The petitioners having failed to clear the examination, the consequence compelled by their failure was their non-continuance especially when the candidates for regular appointment pending which the said ad hoc appointments were made, were available for appointment. As rightly pointed out by the learned counsel for the Respondent-Corporation, in a petition under Article 227 of the Constitution of India, this Court would not normally examine the findings of the Tribunal unless demonstrated to be perverse and the Tribunal, in the present case, has on the cogent reasons discussed in the impugned Award, come to the conclusion that the breaks had not been artificially introduced to give rise to any inference of unfair labour practice and there was justification for non-continuance of the petitioners on account of their failure to pass the prescribed examination. No ground is, thus, made out calling for interference under Article 227 of the Constitution of India.

In view of the above discussion on the merits of the case, it is not necessary to go into the question raised by the learned counsel for the Respondents that the Respondent-Corporation is not an "industry" within the meaning of Section 2(j) of the Act and the decisions cited by the learned counsel for the petitioner in *Registrar of Trade Unions, West Bengal Vs. Mihir Kumar Gooha*, and *Ram Prasad Vs. State of Rajasthan and Others*, in support of his contrary contention.

For the foregoing reasons, these petitions are dismissed but with no order as to

costs.