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**(1994) 02 MP CK 0008**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 89 of 1991**

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|-----------------------------------|----|------------|
| Sagar Co-op. Milk Producers Union | Vs | APPELLANT  |
| Ku. Neelofer Anjum and Another    |    | RESPONDENT |

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**Date of Decision :** 09-02-1994

**Acts Referred:**

Constitution of India, 1950 — Article 14  
Industrial Disputes Act, 1947 — Section 10  
Madhya Pradesh Industrial Relations Act, 1960 — Section 110

**Citation :** (1994) 68 FLR 1050 : (1995) 1 LLJ 473

**Hon'ble Judges :** M.V. Tamaskar, J;G.C. Gupta, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Gulab C. Gupta, J.—This order shall also govern disposal of Misc. Petition No. 645/93 (Sagar Dugdh Sangh Sahkari Maryadit v. Rajendra Kumar Aherwar); Misc. Petition No. 990/91 (Sagar Co-operative Milk Producers Union v. Ayub Khan and 7 Ors.) and Misc. Petition No. 2179/92 (Sagar Co-operative Milk Producers" Union Ltd. v. Dugdh Nigam Karamchari Sangh and 2 Ors.).

2. The petitioner, in all these writ petitions, is a Co-operative Union registered under Mad-hya Pradesh Co-operative Societies Act, 1960. It appears that the said Union had employed the workmen concerned in these writ petitions either on ad hoc basis for 89 days or on daily rate basis temporarily, until further orders. Those who were appointed for 89 days term were permitted to continue even after the expiry of that term and paid wages. Later on, services of the workmen were terminated either orally or by passing an order and giving one month"s pay, in lieu of notice. The termination was challenged by raising an industrial dispute under the Industrial Disputes Act, 1947, which was eventually referred to adjudication of respondent Labour Court u/s 10 of that Act. The respondent Labour Court, after consideration of evidence adduced by the parties, held that the termination was illegal and otherwise unjustified. The Labour Court

further held that the workmen would be deemed to have been continued for more than 240 days and, therefore, entitled to notice and retrenchment compensation, in accordance with law. On this finding, the workmen have been directed to be reinstated with full back wages. The awards passed by the respondent Labour Court are subject matter of challenge in these writ petitions.

3. The first submission of the learned counsel for the petitioner is that the Industrial Disputes Act has no application in the matter, in as much as the dispute could have been agitated before the Registrar u/s 55(2) of the Co-operative Societies Act. This Court finds no substance in the submission. In *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. Durg v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court Jabalpur and Ors.* (1975 MPLJ 583), the matter was examined in detail by a Full Bench of this Court and it was held that the jurisdiction of the Tribunal under the Industrial Disputes Act was not ousted. This judgment was subsequently followed by several judgments reported in *Hemant Kumar Ganga Prasad Gupta v. President, Distt. Co-op. Central Bank Ltd.* (1983 MPLJ 461), *Sahakari Vipnan (Marketing) Sanstha Maryadit, Bhurwaha v. Labour Court, Indore and Ors.* (1987 MPLJ 31), and *Sohanlal v. Guna Central Co-op. Bank Ltd. and Ors.* (1992 RN 258). The learned counsel for the petitioner, however, relied on *Zila Shahakari Kendriya Bank Ltd. v. Labour Court, Mandsaur* (1993 II LLJ 8525)(MP), which according to him, holds to the contrary. A perusal of this judgment would indicate that the Court noticed the Full Bench judgment, but distinguished it on facts of the said case. Under the circumstances, the said judgment would not be read as laying down any law different than the law laid down in Full Bench judgment. Even otherwise, it is unthinkable that a Division Bench of this Court would decide contrary to the Full Bench judgment. In our opinion, the Full Bench judgment lays down the law correctly and needs no further consideration. We, therefore, find no substance in the objection, as aforesaid.

4. It was thereafter submitted that by a notification issued by the State Government, M.P. Industrial Relations Act has been made applicable to dairy manufacturing and selling industry and, therefore, it is the M.P. Industrial Relations Act, 1960 which will govern the matter and because of Section 110 of the said Act, the Industrial Disputes Act would not apply. There is really no substance in the submission. If the aforesaid notification of the Government is read in the context of Section 93 of the M.P. Co-operative Societies Act, the M.P. Industrial Relations Act, 1960 could never be applied to a case covered by the Co-operative Societies Act. Then, this was not the point raised by the petitioners, more so, because the applicability of the Act would depend on the number of employees employed by a particular industry, which will require evidence and consideration.

5. It was thereafter submitted that several employees have not completed 240 days and yet the respondent Labour Court has held that they would be deemed to have completed 240 days of work and entitled to retrenchment notice and

compensation. In the opinion of this Court, it is not necessary to consider this factual controversy. It was the specific case of the petitioner management that the appointment of the workmen was illegal, inasmuch as, the procedure prescribed for that purpose was not followed. They had further submitted that the employees had obtained undue benefit of their appointment for which the General Manager has already been punished. This statement was specifically submitted for consideration of the Labour Court by way of an amendment. This submission, in our opinion, is sufficient to hold that the termination was punitive in nature. It is common ground that the workmen concerned had not only been appointed, but had worked and drawn wages. But for the termination, they would have continued in employment. Under the circumstances, the termination had adverse effect on them. Any order having adverse effect had to be passed after due compliance of principles of natural justice. The learned counsel for the petitioners, however, relied on *Ajay Kumar Minz Vs. State of Bihar and Others* to submit that where the appointment was obtained by committing forgery and was terminated for that reason, principles of natural justice were not attracted. This court does not read the said judgment as bidding farewell to the principle of natural justice. This court reads it as laying down that once it is held in accordance with law that the appointment was obtained by committing forgery, no further observance of principle of natural justice was required. This Court cannot accept the said judgment as the authority for the proposition that even while reaching the finding that the appointment was obtained by committing forgery, the workman concerned was not entitled to a hearing. That would be going back to Pre-1947 era and such an intention cannot be easily inferred. The learned counsel further relied on *Koodaranji Service Co-op. Bank Vs. M.M. Lissy and Others*, a judgment of Kerala High court, which lays down that where termination has been effected in accordance with Service Rules, it does not amount to retrenchment within the meaning of Industrial Disputes Act. The said judgment, in our opinion, has no application to the facts and circumstances of the present case. Then, there are direct authorities of the apex court, such as, *Shrawan Kumar Jha and others Vs. State of Bihar and others*, which held that in such a situation, it is obligatory on the part of the management/employer to give a reasonable opportunity of putting his case to a workman and denial of this opportunity renders the orders of termination illegal. This denial, in our opinion, also violates Article 14 of the Constitution, which provides a constitutional definition of principles of natural justice. Under the circumstances, we have no doubt that impugned orders in the instant case were punitive in nature and for that reason could not be sustained. In this view of the matter, it is not considered necessary to examine whether the individual workmen had or had not completed 240 days of actual work.

6. It is ultimately submitted that the petitioner Union is likely to close down because of financial difficulties and, therefore, there is no justification either for reinstatement or payment of back-wages. It is difficult to accept the submission. Reinstatement and back wages result from the illegality committed by the

management/employer and is not made dependent on subsequent events to which the workmen concerned have no contribution. This in, our opinion, cannot be a ground for denying normal relief of reinstatement and backwages. The workmen would, however, continue in employment, as long as the industry continues and would face the same fate as others.

7. The Court finds no substance in these petitions, which fail and are dismissed with costs. Counsel fee Rs. 500 in each case.