

(2004) 02 AHC CK 0124

In the Allahabad High Court

Case No : Writ Petition No. 756 of 2001 (MS), Writ Petition No. 4703 of 2001 (SS)

State of Uttaranchal, Munna Singh Chauhan

APPELLANT

Vs

Labour Court, Dehradun and another, Executive Engineer,
Lakhwar Division and others

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2004) 02 AHC CK 0124

Hon'ble Judges : Rajesh Tandon, J

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard the learned Counsel for the parties at length.

2. Writ Petition No. 756 of 2001 has been filed by the State for the issue of a writ order or direction in the nature of certiorari quashing the award dated 15.6.1995 passed by the Labour Court in favour of Sri Munna Singh Chauhan.

3. Writ Petition No. 4703 of 2001 (SS) has been filed by Sri Munna Singh Chauhan for the issue of a writ, order or direction in the nature of mandamus directing the respondents to regularise his services.

4. Brief facts giving rise to the present writ petition are that Sri Munna Singh Chauhan filed the claim petition before the Presiding Officer, Labour Court, Dehradun by which he has prayed for his reinstatement in the services of the State of Uttaranchal, Division Irrigation Department, Dakpathar.

5. According to Sri Munna Singh Chauhan, he was engaged in the department on 5th November, 1980 as Helper. He continued to work as such till 28.3.1989 but the services of the petitioner was terminated without any notice as well as without assigning any reasons. The employee concerned has claimed the benefit of Section 6N of the U.P. Industrial Disputes Act, 1947 in as much as he has completed 240 days of his services.

6. Following matter was referred to the Presiding Officer, Labour Court, Dehradun :

7. After hearing both the parties following points arise for determination in both the writ petitions :

(i) Whether the findings of the Labour Court with regard to the benefit given to the Respondent No. 2 so far as 240 days can be interfered.

(ii) Whether the Irrigation Department, where the Respondent No. 2 was working is covered under the definition of the Industry.

(iii) Whether the claimant having been employed for a certain period, claim petition is maintainable.

(iv) The Respondent No. 2 has also claimed the benefit of regularization in view of Raj Narayan Prasad and others v. State of U.P. and others, (1998) 8 SCC 473.

(v) Delay in filing claim petition is result. Findings on Point Nos. (i) and (iv)

8. The petitioner in Writ Petition No. 756 of 2001 has stated that the Respondent No. 2 has left the work himself and went away. The petitioner has further stated that the Respondent No. 2 has not worked for more than 240 days in whole calendar year and the Respondent No. 2 has not been appointed in the petitioner's organization against any vacant post.

9. On the other hand the Respondent No. 2 has stated that before termination of his services the employer has not complied with the provisions of Section 6N of U.P. Industrial Dispute Act. The workman has worked for more than 240 days before termination of his services and, therefore, the termination order is illegal and cannot be sustained.

10. The Labour Court has come to the conclusion that the Respondent No. 2 has worked for more than 240 days and the order was passed directing the reinstatement of the petitioner. So far as the back wages are concerned Labour Court has awarded to the extent of 50% in favour of the Respondent No. 2.

11. The facts of the Writ Petition No. 4703 of 2001, are that the petitioner has claimed regularisation as well as the benefit of the Government Order dated 24.9.1997. Hon'ble Mr. Justice P.C. Verma was pleased to pass the following order on 19. 10.2001 at the time of admission :

"In the counter affidavit cause shall be shown as to why the benefit of judgment of Hon'ble Apex Court in Writ Petition (Civil) No. 140 of 1989, Raj Narain Prasad and others v. State of U.P. and others, decided on January 18, 1996 and also Government Order dated 24.9.1997, contained in Annexure Nos. 7 and 8 respectively to the Writ Petition, is not being given to the petitioner and he is not being treated as work charge employee."

12. The petitioner has claimed the benefit of the Government Order dated 24.9. 1997 where it has been mentioned that all those employees who were working

on 1.1. 1993 and has completed 240 days will be entitled for all the benefits of the muster roll employee and, therefore, removal was wholly illegal. The Government Order dated 24.9.1997 provided that those who have completed 240 days on 1.4.1993 shall be given the benefit of the muster roll employees. The said Government Order is quoted below :

13. Counsel for petitioner has also claimed the benefit of regularization in accordance with the judgment of the Apex Court in Raj Narayan's case. In Raj Narayan Prasad and others v. State of U.P. and others, (1998) 8 SCC 473, Apex Court has considered regarding work charged employees who are on muster roll. The observations are quoted below :

1. The question is regarding the regularisation of workcharged employees and musterroll labour employed on difference projects by the State of U.P. at different points of time. The respondent State has furnished a list of almost 13 thousand such employees employed zonewise as per Annexure "A1" to the additional affidavit on behalf of the State. These are divided into two groups, namely, 7744 workcharged employees and 5516 musterroll employees who came to be regularized pursuant to orders made by this Court from time to time since after 16.3.1993 is appended as Annexure "A4". Annexure "A5" gives the list of vacant posts available in the regular establishment at the relevant point of time. The State of U.P. also contends that on account of financial constraints, it was forced to slow down the pace of work for as many as 7 important projects. Pursuant to our order dated 11.10.1993 and in the light of the observations made in the State of Haryana v. Piara Singh, we are told that the State has prepare a Scheme, the details whereof are given in the additional affidavit, Para 6. According to this Scheme, broadly stated, the State has undertaken to regularize workcharged employees employed prior to 19.9.1985 who possess qualification for regular appointment on an equivalent post in the service of the establishment, i.e., who qualify under the recruitment rules in force for that post. The age criteria, however, would be relaxed but other qualifications for eligibility would have to be satisfied. The State has to prepare a seniority list of workcharged personnel on the basis of those who are qualified under the relevant recruitment rules and thereafter regularization has to take place strictly in accordance with seniority. The estimated vacancies in the years 1993-94 are indicated and the projection for the specific years insofar as vacancies are concerned is estimated and mentioned in the additional affidavit. As regards dailywage/musterroll personnel, it is stated that since their work is of a contingent nature, it is not possible to regularize them unless suitable posts are required and created under the rules. The regularization of dailypaid employees and musterroll employees of the Irrigation Department, contends the deponent, is beyond the planning of the State and its financial capacity. To put it differently, therefore, the State has prepared a regularization scheme so far as workcharged employees are concerned but as expressed its inability to prepare any such scheme for dailyrated/musterroll employees. We have carefully perused the proposed scheme in regard to workcharged employees and we felt that in clause

"D" of the cadre strength from year to year and based on the past requirement and continuity of workcharged employees, the cadre strength should be increased by a certain percentage of the workcharged employees work over a period of time that may be fixed by the Government so that the pace of regularization is accelerated and is not the same as obtaining in the past. For example, if 100 workcharged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place, a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, thereafter, becomes necessary because while on the one side the financial of the workmen who have served the State on difference projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impress on the State Government that if workcharged employees have been on the establishment for long periods, the State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to a reasonably good number of workcharged employees who have been associated with the State Departments for long periods. We would, therefore, direct that clause "D" should be understood as taking into its fold a periodical yeartoyear revision of the cadre strength and besides the estimated vacancies, the additional vacancies on account of the increase in the cadre strength should become available for regularization. If the figures given in Para 6A perused, it appears that 25 per cent were engaged on workcharged establishment between 196065, 50 per cent between 196570, 20 per cent between 196065, 20 per cent between 197580 and 5 per cent between 198085. This would show that there are workmen on the workcharged establishment who had joined between 196065 and who, we believe, if continuing in service, would certainly be required by the departments concerned and could be considered for regularization under the Scheme by an increase in the cadre strength. So also one can say that the workmen working between 196575, if still in employment, could be considered for the State has to keep in view that financial constraints and the need for allocation of finances for development of projects, it should also show that at the end when they are relieved from service on their attaining the age of superannuation, they may have something to fall back on. Keeping this in mind, we think that a liberal increase in the workforce for the first few years would satisfy the large number of workcharged employees who are working on different projects of each department for a number of years.

2. That takes us to the question regarding the regularization of musterroll employees. Because they can only stand next to workcharged employees, we would recommend that they could be absorbed as workcharged employees to the

extent or at a certain percentage of posts falling vacant on the letter being regularized under the Scheme. That would satisfy a certain percentage of the category of dailywage/musterroll employees also. We would like the State to undertake a review of the cadre strength by support to the cadre, With these observations and recommendations, we approve the Scheme but we would once again impress upon the State that the spirit of our observations in Piara Singh case should be observed. The petitions shall stand disposed of accordingly."

14. As will appear from the aforesaid findings that the Respondent No. 2 has completed 240 days and he is also entitled for the benefit of the Government Order dated 24.9.1997 as he was in the employment before 1.1.1993

Findings on Point No. (ii)

15. Counsel for the petitioner has submitted that the Respondent No. 2 was working in the Irrigation Department and the same was not an industry, and, therefore, the Presiding Officer has no jurisdiction to decide the dispute.

16. So far as the argument of the Standing Counsel that the Irrigation Department is not covered under the definition of industry is concerned, it has already been held in 1988 (2) Supreme Court Cases 537, by the Apex Court in Des Raj and others v. State of Punjab and others, that the Irrigation Department is an industry. The observations are quoted below :

"Perhaps keeping in view the observations of the learned Judges constituting the seven Judges Bench, the definition of industry as occurring in Section 2(j) of the Act was amended by Act 46 of 1982. Though almost six years have elapsed since the amendment came on to the Statute Book, it has not been enforced yet. Bare Acts and Commentaries on the Industrial Disputes Act have, however, brought in the new definition by deleting the old one with a note that the new provision has yet to come into force. This situation has further added to the confusion.

It is now time to turn to the facts of the case. Judicial notice can be taken of the position that Haryana and Punjab Originally constituted one State and Haryana has become separate from 1966. The Irrigation Department of the erstwhile Punjab State was discharging the State's obligations created under the Northern India Canal and Drainage Act, 1873. The Administration Report of the year 1981-82 of the Public Works Department, Irrigation Branch, which really deals with the Irrigation Department has been produced before us with notice thereof to the appellant's learned Counsel. We may extract a part of the report :

The Irrigation Department which was set up more than 100 years ago is mainly responsible to provide water supplies for the subsistence and development of agriculture in the 30.36 hectare cultivable area of the State covered by canal command. This requires harnessing of the surface and ground water resources of the State and their equitable distribution to the beneficiaries, within Canal Common area. This task involves construction of multipurpose, major, medium and minor irrigation projects, maintenance of network of channels, regulation of

canal supplies, enforcement of water laws etc. and levying of cropwise water supply rates on the irrigators for recovery through the State Revenue Department. Extension, improvement and modernization of the age old canal system is also continued to be done simultaneously by the Department. Besides the irrigation the department also provides water for drinking purposes to villages and towns in the State. The canal water supplies are also being made available for the industrial development in areas where no other source for water supplies exists.

The State of Punjab was reorganized in the year 1966 and a number of disputes on the sharing of water/powers with successor States cropped up. The issues regarding apportionment of Ravi Beas waters over the preparation uses falling to the share of erstwhile Punjab, apportionment of rights and liabilities of Bhakra Nangal Project, retention of control of Irrigation Head Works of Haike, Ropar and Ferozepur by Punjab, restoration of Bhakra Nangal Project and Beas Project to Punjab etc., etc., are also dealt with by the Department.

The Irrigation Department is also responsible to provide protection to the valuable irrigated lands and public property from flooding, river action and water logging. This requires construction of flood protection, river training, drainage and antiwater logging works and their maintenance.

The Department has also to plan ahead for irrigation development in the State for which purpose proposal of irrigation schemes are investigated, surveyed and prepared in advance. Feasibility of irrigation schemes for hydropower generation from the existing and proposed irrigation schemes is also investigated by the Department and their execution undertaken. The execution of new irrigation schemes, extension and improvement of existing schemes requires preparation of detailed designs of channels and their necessary works. This work is also done by the Department.

During designs, execution and maintenance of the irrigation, flood control and drainage projects, field problems arise for the solution of which research, model studies and laboratory experiments have to be conducted. The Department undertakes this work as well.

Having shared with the neighbouring States almost entire water resources of the rivers flowing through the Punjab water has now become a constraint to keep the tempo of the development of irrigated agriculture in the State. For this purpose it has not only become necessary to evaluate the total water resources of the State but also plan conjunctive use of surface and ground water for the optimum development of this precious resource. Further it has become necessary to conserve irrigation supplies and propagate their use economically through innovative water distribution system like sprinklers, drip system, etc.

The Irrigation Department plans and executes reclamation of salt or the affected areas within canal command. Measurements of discharges in the Ravi, the Beas and the Sutlej besides the beings (sic) and drains in the State is also carried out

by the Irrigation Department. These observations which are being made for the last over 60 years have provided basic data to the design of multipurpose Bhakra Nangal, Beas and BeasSutlej Link projects which have transformed economies not only of the State of Punjab but also of the State of Haryana and Rajasthan.

The facts extracted from the report apparently give a picture of the activities of the Irrigation Department. There is a Full Bench judgment of the Punjab and Haryana High Court in the case of Om Prakash v. Executive Engineer, SYL, Kurukshetra, where the question that came up for consideration before the Full Bench was thus State; whether the Irrigation Department of the State (of Punjab) comes within the ambit of industry in Section 2(j) of the Industrial Disputes Act, 1947? The Court took into account the judgment of another Full Bench decision of the same Court in the case of State of Punjab v. Kuldeep Singh, where the question for consideration was whether the Public Works Department of the State Government was an industry. In Om Prakash case, the Full Bench barely took note of the decision of this Court in Bangalore Water Supply case but did not deal with it. It also took into account the position of the Irrigation Department in Punjab keeping in the background the provisions of the Northern India Canal and Drainage Act, 1873 and State :

The Irrigation Department is a branch of the Public Works Department. It provides a reasonable assured source of water for crops through the network of canals. The Irrigation Department also carries out schemes and takes measures for protecting crops from the menace of floods during the times of abnormal rainfall. In the olden times when there were no canals, agriculture was very limited and cultivators depended solely in rainfall. By the passage of time it was thought necessary to build irrigation and drainage works for the purpose of providing better water facilities to the farmers on whom depends the economy of this country. These works could only be built by the Government.

The Western Jamuna canal which serves the State of Haryana was the first major irrigation work which was initially constructed by Feroze Shah Tuglaq in 1351. It was reconditioned by Akbar in 1568 and was extended in 1626 in the reign of Shahajahan, The canal was constructed in a reasonable serviceable form by the British during 1817-1823. Then the Upper Bari Doab canal, Sirhind canal, Lower Chanab canal and Lower Jhelum canal etc., were constructed. Thereafter, many other projects Nangal project with its network of Bhakra system and the Beas project. All these projects have been carried out by the State at the State expense. It is understandable that such projects could not at all be undertaken by private entrepreneurs or could be left in their hands for execution. Further, water is a State subject as per Entry 17 in List II of Seventh Schedule of the Constitution. Even before coming into force of the Constitution, water of rivers and streams was considered to be belonging to the State.... Thus it would be evident that the water has at all times been a State subject and the State can exercise full executive powers in all matters connected with the water. The State supplies water to the farmers through the network of canals. It is correct that

water rates are realized from the farmers but they are not realized sell water to the farmers. As contended justifiably by the learned Advocate General, the water charges are not even sufficient to meet the establishment and maintenance expenses of the department. Moreover, the water rates have never been realized on the basis of the quantity of the water supplied. These rates are dependent upon the class of crops raised by the farmers and have been fixed in terms of per acre. It may be noted that rates for crops, such as wheat, sugarcane, cotton, rice are higher than the other crops such as gram, oil seeds, bajra and maize etc. In other words, the water charges have been linked on the principle of bearability, that is, paying capacity of the farmer dependent upon his income from the kind of crop raised by them. The water is supplied on the basis of the holding of each farmer in terms of cultivable commanded area, that is, on the basis of uniform and equitable yardstick. Again, the water charges are remitted when the crops are damaged by natural calamities such as locust, hailstorms, flood or drought etc. Further, the construction of canals, dams, barrages and other projects cannot be entrusted to some private hands. The construction of these works involves compulsory acquisition of land, which can also be done by the State. Merely this fact that water is supplied by charging certain rates cannot warrant a finding that the State is indulging in trade or business activity or an activity which is analogous to trade, business or economic venture. From what has been stated above, there can be no gainsaying that the functions of the Irrigation Department cannot at all be left to private enterprise. The facts which weighed in holding that the construction and maintenance of national and State highways by the State does not come within the ambit of industry in *Kuldip Singh* case are present so far as the Irrigation Department is concerned.....In this view of the matter, I hold that the functions of the Irrigation Department are essentially Government functions and that these functions neither partake of the nature of trade and business nor are even remotely analogous thereto and that this department does not come within the ambit of industry as defined in Section (j) of the Act."

17. Relying upon the aforesaid judgment it has been held by the Uttaranchal High Court in *State of U.P. v. Presiding Officer, Labour Court*, 2003 (96) FLR 317, that the employees working in the Irrigation Department are covered under the definition of the industry. The observations are quoted below :

"The petitioner have challenged the award on the ground that the petitioner's establishment is a Department of Irrigation which is giving higher education and training to working Engineers and does not fall within the definition of "Industry". That the Government Order dated 7.2.1997 was applicable only in case of work charge employees and since the respondents were not on work charge establishment, therefore, benefit of Government Order dated 7.2.1997 was wrongly given. It was clearly established before the Labour Court that these respondents were working as contract labour. The learned Standing Counsel vehemently argued that Irrigation Department is not an Industry" and the institute a Training Institute, even otherwise it cannot be held to be an

"Industry". He relied on a judgment of the Apex Court in a case of the Executive Engineer (State of Karnataka) v. K. Somasetty and others, in which the Apex Court held as under :

It is now wellsettled legal position that the Irrigation Department and Telecommunication Department are not an "Industry" within the meaning of definition under the Industrial Disputes Act as held in Union of India v. Jai Narain Singh and in State of U.P. v. Suresh Kumar Verma. The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive Principles, that the Government should bring about welfare State by all executive and legislative actions. Under these circumstances, the State is not an "Industry" under the Industrial Disputes Act. Even otherwise, since the project has been closed, the respondent has not right to the post since he had been appointed on daily wages."

The Apex Court in the case Coir Board, Erankulam, Cochin and others v. India Devi P.S. and others, after noticing the conflict in the judgment of Hon"ble two Judges, referred the matter to the Hon"ble Chief Justice of India for a decision by Larger Bench. The Larger Bench by a short order rejected the reference and held that judgment delivered by sevenJudges Bench in Bangalore Water Supply and Sewerage Board v, A. Rajappa (supra) does not require consideration on a reference made by a twoJudges Bench. The order is reproduced as under :

We have considered the order made in Civil Appeals Nos. 172021 of 1990. The judgment in Bangalore Water Supply and Sewerage Board v. A. Rajappa, was delivered almost two decades ago and the law has since been amended pursuant to that judgment through the date of enforcement of the amendment has not been notified.

The judgment delivered by seven learned Judges of this Court in Bangalore Water Supply case does not, in our opinion, require any reconsideration on a reference being made by a two Judges Bench of this Court, which is bound by the judgment of the Larger Bench.

The submission of the learned Counsel for the petitioners that Kalagarh unit of the Irrigation Department being a Training Institute does not fall within the definition of Industry and the learned Counsel relied on the judgment of the Apex Court in the case of Management of Safdar Hospital, New Delhi v. Kuldip Singh Sethi.

The Safdar Jung Hospital case in which it was held by the majority of six Judges that:

It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade business. There is no evidence that it is more than a place where persons can get treated. This is a part of the functions of Government and the Hospital is run as a Department of Government. It cannot, therefore, be said to be an industry. The Tuberculosis

Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. There hospital is wholly charitable and is a research institute. The dominant purpose of the hospital is research and training. In these circumstances the Tuberculosis Hospital cannot be described as industry".

The Safdar jung Hospital case was reconsidered by the seven Judges Bench in Bangalore Water Supply and Sewerage Board v. A. Rajappa (supra) and in Para 157 of the report held as under :

"We have adduced enough reasons in the various portions of this judgment to regard hospitals, research institutions and training centers as valuable material services to the community, qualifying for coming within Section 2(j) wrong and Hospital Mazdoor Sabha was right."

Industry, as defined in Section 2(j) and explained in Banerjee (AIR 1953 SC. 58) has wide import:

(a) Where (i) systematic activity, (ii) organized by cooperative between employer and employees the direct and substantial substance is chimerical, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious, but inclusive of material things or service geared to celestial bliss, i.e., making, on a large scale prasad or food) prima face, there is an industry in that enterprise;

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(b) The true focus is functional and decisive test is the nature of the activity with special emphasis on the employeremployee relations.

(c) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, there meaning cannot be magnified to overreach itself.

(a) Undertaking must suffer a contextual and associational shirkage as explained in Banerji and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), though not trade or business, may still be industry provided the nature of the activity, viz, the employeremployee basis, bears resemblance to that we and in trade or business. This takes into the fold "industry" undertakings, callings and services, adventures "analogous to the carrying on the activity viz, in organization the cooperation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or out sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between

employer and workman, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs, (iii) educational institutions, (iv) cooperatives, (v) research institutes, (vi) charitable projects, and (vii) others kindred adventures, if they fulfill the triple tests listed in I (supra), cannot be exempted from the scope of Section 20).

(b) A restricted category of professions, clubs, cooperatives and even gurukulas and little research labs, may be qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained buy in minimal matters, marginal employees are hired without destroying the nonemployee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in free medical center or ashramites working at the binding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, the institution is not an industry even if stray servants, manual or technical are hired. Such elamosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workman" as in the University of Delhi case" or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be the true test. The whole undertaking, will be "industry" although those who are not "workman" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood, (along) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

We overrule Safdarjung Solicitor's case, Gymkhana, Delhi University,

Dhannargirji Hospital and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha, is hereby rehabilitated.

The Apex Court in *Des Raj and others v. State of Punjab and others*, after applying the aforesaid text on the nature and activities carried on by the Irrigation Department held that Irrigation Department is an "industry".

Since the Kalagarh unit is the branch of Irrigation Department, therefore, the same is also an Industry within the definition of "Industry" under the U.P. Industrial Disputes Act in view of the law laid down by the Apex Court in *Bangalore Water Supply and Sewerage Board v. Rajappa's case*."

18. Thus the Irrigation Department being an industry, no interference can be made on the findings recorded by the Labour Court.

Findings on Point No. (II)

19. Counsel for the petitioner has submitted that the employee concerned was employed for a certain period and as such he was not entitled to claim reinstatement.

20. In AIR 1984 SC 500, *Gammon India Limited v. Niranjan Dass*, the Apex Court, after relying upon the various judgments of the Hon'ble Supreme Court, has recorded a finding that the service of the employee of a company cannot be terminated on the account of recession and reduction in the volume of work of the company.

21. In *S.M. Nilajkar and others v. Telecom District Manager, Karnataka*, reported in 2003 SCC (L&S) 380, it has been held as under :

"It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are shortlived. The objective is to meet the need 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 labour laws. Subclause (bb) in the definition of retrenchment was introduced to take care of such like situations by the Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.

The termination of service of a workman engaged in scheme or project may not amount to retrenchment within the meaning of subclause (bb) subject to the following conditions being satisfied :

- (i) That the workman was employed in a project or scheme of temporary duration,
- (ii) The employment was on a contract, and not as a dailywager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;
- (iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and
- (iv) The workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

The engagement of a workman as a dailywager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or to the occurrence of some event, and therefore, the workman ought to know that his employment was shortlived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of commencement of the employment itself that his employment was shortlived and as per the terms of the contract, the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not, therefore, complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee to prove the abovesaid ingredients so as to attract the applicability of subclause (bb) abovesaid. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of subclause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or dailywagers in a project. For want of proof attracting applicability of subclause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment."

22. In view of the aforesaid findings, no interference can be made on the findings recorded by the Labour Court, and the Respondent No. 2 has rightly, been treated as regular employee.

Findings on Point No. (v)

23. Counsel for the petitioner has stated that the claim of the Respondent No. 2 in W.P. No. 756 of 2001 was highly belated.

24. In *Sapan Kumar Pandit v. U.P. State Electricity Board and others*, reported in 2001 (SC) SLR 658, the Apex Court has held as under :

"Hence the real test is, was the industrial dispute in existence on the duty of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which elapsed since the inception of

the dispute. That apart, a decision of the Government in this regard cannot be listed (sic) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decided to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute."

The High Court relied on the following observations of the decision of this Court in *Shalimar Works Ltd. v. Workmen*, AIR 1959 SC 1217, (AIR p. 1221, Para 13):

"It is true that there is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly to when disputes relate to discharge of workmen wholesale, as in this case."

It is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provision i.e., Section 4K of the U.P. Act. In *M/s. Western India Watch Co. Ltd. v. The Western India Watch Co. Workers Union*, AIR 1970 SC 1205, learned Judges made the following observations :

"Therefore, the expression "at any time", though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the Conciliation Officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an arguable case, it can "at any time", i.e., even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

"There are cases, in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonable possible to conclude in a particular case that the dispute ceases to exist after sometime. But when the dispute remained alive though not galvanized by the workmen or the union on account of other justified reasons, it does not cause the dispute to fall into total eclipse. In this case, when the Government has chosen to refer the dispute for adjudication under Section 4K of the U.P. Act the High Court should not have quashed the reference merely on the ground of

delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its relieves. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

25. Learned Counsel for the petitioner has submitted that the claim petition has been filed after undue delay as such the same is not maintainable. The services of the workman were terminated on 28.3.1989. Reference was made to the Labour Court on 29.11.1991 and as such there appears no undue delay.

26. In view of the law laid down by the Apex Court in *Sapan Kumar Pandit v. U.P. State Electricity Board and others*, 2001 (90) FLR 754 (SC), Labour Court has rightly awarded the back wages to the extent of 50%, therefore, no interference is required under Article 226 of the Constitution of India in the writ jurisdiction.

27. The workman has set up his case that he was continuously working with the employer and before terminating his services, he has completed 240 days of working in preceding 12 months and that the provision of Section 6N of the U.P. Industrial Disputes Act, 1947 has not been complied with by the employer and, therefore, termination order is wholly illegal.

28. In view of the findings of the Labour Court that the Respondent No. 2 has worked for more than 240 days, I find no infirmity in the order passed by the Labour Court. The findings recorded by the Labour Court are findings of fact and this Court, therefore, in exercise of powers under Article 226 of the Constitution of India declines to interfere with the findings recorded by the Labour Court.

29. The Writ Petition No. 756 of 2001, *State v. Labour Court and another*, is dismissed with costs.

30. Writ Petition No. 4703 of 2001 filed by Sri Munna Singh is allowed. The respondent are directed to regularise the services of the petitioner and to give him benefit of the Government Order dated 24.9.1997. No. order as to costs.

Petition 756/2001 dismissed and Petition 4703/2001 allowed.