State of U.P. and ors. Vs. Deep Chandra and ors.

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Court : Allahabad

Decided On : Nov-14-2003

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Judge : Tarun Chatterjee, C.J. and ;R.K. Agrawal, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 2 and 6N

Appeal No. : Special Appeal No. 35 of 2001

Appellant : State of U.P. and ors.

Respondent : Deep Chandra and ors.

Advocate for Def. : K.K. Roy and ;A.K. Tiwari, Advs.

Advocate for Pet/Ap. : Sabhajeet Yadav, S.C.

Judgement :

R. K. Agrawal, J.

1. The present Special Appeal has been filed against the Judgment and order dated 22nd February, 2000 passed by the learned single Judge in Civil Misc. Writ Petition No. 4294 of 1993 by which he has allowed the writ petition and set aside the order of termination of services of the writ petitioners. The learned Judge further directed the opposite parties to reinstate the writ petitioners in service and

consider the case of their regularisation. However, they shall not be entitled for back wages from the date of termination till the date of reinstatement.

2. Briefly stated the facts giving rise to the present special appeal are as follows :

According to the writ petitioners, who are five in number, they were employed as mate on 1st October, 1989 in the Public Works Department, Allahabad. They were initially employed in Departmental Construction Unit, Public Works Department, Allahabad and were placed on temporary muster roll from 10.10.1989 to April, 1991. They were subsequently transferred to Temporary Departmental Construction Unit (Road) in the Public Works Department, Allahabad. After their transfer, they were placed on permanent muster roll from 10th May, 1991. However, when it was discovered that they have wrongly been placed on the permanent muster roll, their names were removed from the permanent muster roll and they were paid wages admissible to the temporary muster roll employees with effect from November, 1991. The Resident Engineer vide order dated 23rd May, 1992 directed for recovery of the excess amount paid to the petitioners for the period when their names were mentioned on permanent muster roll. The order dated 23rd May, 1992 was challenged by the petitioners by filing Civil Misc. Writ Petition No. 21075 of 1992 in which an interim order was passed by this Court staying the operation of the order dated 23rd May, 1992. According to the writ petitioners, the Engineer-in-Chief issued an order dated 9th July, 1991 directing his subordinate officers not to maintain continuity in employment of those employees who are engaged on daily wages after 1.1.1991. It is alleged by the writ petitioners that the Superintendent of Works Construction Division Unit vide letter dated 20th June, 1992 informed the Superintendent of Works, Temporary Construction Division Unit (Road) World Bank Project that the writ petitioners were employed in May, 1991 whereupon the writ petitioners were not allowed to work. They approached this Court by filing Civil Misc. Writ Petition No. 4294 of 1993 giving rise to the present special appeal, with a prayer for issuance of an appropriate writ, order or direction commanding the respondents to allow the writ petitioners to continue in service and to treat them in continuous service and to pay their wages. The aforesaid writ petition was filed on the ground that the writ petitioners have worked continuously for more than 240 days in the years 1989-

90, 1990-91 and 1991 upto the date of their retrenchment and their retrenchment was in utter disregard of the provisions of Section 6N of the U. P. Industrial Disputes Act, 1947 (hereinafter referred to as 'the U. P. Act'), as neither one months' notice in writing indicating the reasons for retrenchment has been given to the writ petitioners nor they have been paid wages in lieu of the period of notice. They were also not paid the retrenchment compensation. In their reply, the respondents submitted before this Court that the writ petitioners were engaged only from May, 1991 and since their services were no longer required after 1.8.1992 no work was allocated to them. They further denied that the provisions of Section 6N of the U. P. Act are applicable in the present case as the petitioners are not regular employees nor they were appointed on any post. They also claimed that the Public Works Department is not an industry, therefore, the provisions of the U. P. Act are not applicable.

3. The learned Judge by the impugned judgment and order found that the provisions of Section 6N of the U. P. Act should have been followed and Section 6N is at par with Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Central Act'), since the Apex Court in the case of Lal Mohd. and Ors. v. Indian Railway Construction Co. Ltd. and Ors., 1999 (1) SCC 596, while interpreting Section 25F of the Central Act has held that in case an order is passed in violation of Section 25F of the Central Act, relationship of master and servant did not snap and the order of termination from service is void ab initio. While allowing the writ petition, the learned single Judge set aside the order of termination and directed for reinstatement of the writ petitioners in service. He further directed the opposite parties to consider the case of the writ petitioners for regularisation. However, the writ petitioners were not held to be entitled for back wages from the date of termination to the date of reinstatement.

4. We have heard Sri Sabhajeet Yadav, learned standing counsel for the appellants and Sri K.K. Roy, learned counsel appearing on behalf of the respondents writ petitioners.

5. The learned standing counsel submitted that all the writ petitioners were working as muster roll employees on temporary basis and as they were no longer

required to work, they were not allocated any work after 1.8.1992. He further submitted that these persons have no right to claim any regularisation nor they can seek protection of Section 6N of the U. P. Act as the Public Works Department of the Government of U. P. is not 'an industry', thus, the provisions of the U. P. Act are not at all applicable.

6. He relied upon the following decisions :

(i) Madhyamik Siksha Parishad, U.P. v. Anil Kumar Mishra and Ors. etc., AIR 1994 SC 1638 ;

(ii) Venugopal M. v. Divisional Manager, Life Insurance Corporation of India, Machilipatanam, Andhra Pradesh, AIR 1994 SC 1343 ;

(iii) Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors., AIR 1997 SC 3657 ;

(iv) State of Rajasthan v. Kunji Raman, 1997 (2) AWC 939 (SC) : AIR 1997 SC 693 ;

(v) Coir Board, Ernakulam, Cochin and Anr. v. Indira Devi P.S. and Ors., AIR 1998 SC 2801 ;

(vi) Life Insurance Corporation of India and Anr. v. Raghavendra Seshagiri Rao Kulkarni, AIR 1998 SC 327 ;

(vii) Lal Mohammad and Ors. v. Indian Railway Construction Co. Ltd. and Ors., AIR 1999 SC 355 ; and

(viii) State of Gujarat and Ors. v. Pratamsingh Narsinh Parmar, JT 2001 (3) SC 326.

7. Sri K. K. Roy, learned counsel appearing for the writ petitioners submitted that each of the writ petitioners has continuously worked for two hundred forty days in a year since 10th October, 1989 till 1st August, 1992 and, therefore, their services could not have been retrenched without complying with the provisions of Section 6N of the U. P. Act. He further submitted that the provisions of the U. P. Act are

applicable to the Public Works Department as it is an industry. If the provisions of Section 6N of the U. P. Act are not complied with then it does not snap the relationship of master and servant and the order of termination from service is void ab initio. He relied upon the following decisions :

(i) Chant Bahadur v. Labour Court, U.P., Lucknow and Ors., 1986 (52) FLR 725 ;

(ii) Akhil Raj, Rajya Hand Pump Mistries Sangathan, Banswara and etc. v. State of Rajasthan and Ors., 1994 LIC 345 ;

(iii) Executive Engineer, National Highway Baripada Division v. Presiding Officer, Industrial Tribunal and Ors., 1994 (69) FLR 768 ;

(iv) Chief Conservator of Forest and Anr., etc. etc. v. Jagannath Maruti Kondhare, etc. etc., AIR 1996 SC 2898 ;

(v) Yogesh Srivastava v. State of U. P. and Anr., 1998 (80) FLR 463 ;

(vi) Vishambar Singh Sikarwar v. UCO Bank, Calcutta and Ors., 1997 LIC 89 ; and

(vii) Suresh Chandra and Ors. v. State of U.P. and Ors., 2003 (1) ESC 551.

8. Having heard the learned counsel for the parties, we find that all the writ petitioners were working as muster roll employees in Temporary Departmental Construction Unit (Road) (World Bank Project) in the Public Works Department, Allahabad. They were engaged for construction of road in Utraula, Faizabad, Allahabad section. They had initially been employed on 10th August, 1989 and worked till 1st August, 1992. In paragraph 16 of the writ petition, the writ petitioners have specifically stated that the Public Works Department of the Government of U. P. has been entrusted with the work of construction and maintenance of road and as such is an industry in which the writ petitioners were employed as workmen and they continuously worked for more than 240 days in the years 1989-90, 1990-91 and 1991-92 preceding the date of their retrenchment. In paragraph 17 of the counter-affidavit filed by Sri S.N. Kakker on behalf of the respondents, the averments made in paragraph 16 of the writ petition have not been admitted. Only this much has been stated that the Public Works Department

is not an industry. Thus, the facts remain that the Public Works Department was entrusted with the work of construction and maintenance of the road in which project these writ petitioners have been employed and were working. They had continuously worked for more than 240 days in the years 1989-90, 1990-91 and 1991-92, i.e., immediately preceding the date of their retrenchment.

9. The question is whether the Public Works Department is an 'industry' or not and whether the provisions of the U. P. Act would be applicable to it. In the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa, 1978 (36) FLR 266, the Seven Judges Constitution Bench of the Apex. Court has held that for deciding as to whether an establishment is an industry, the dominant nature test has to be followed. It has summarised the dominant nature test as under :

'143. 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 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) 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.'

10. The aforesaid decision was followed by the Apex Court in the case of Chief Conservator of Forests and another v. Jagannath Maruti Kondhare, 1996 (72) FLR

940. The Apex Court in the aforesaid case has held that the scheme which was implemented by the Chief Conservator of Forest cannot be regarded as a part of inalienable or inescapable function of the State and, therefore, cannot be regarded as part of the sovereign function of the State. Thus, there was no threshold bar fn knocking the door of the Industrial Courts by the respondents making a grievance about the adoption of unfair labour practice by the appellants.

11. As to what is the sovereign function of the State has been considered by the Apex Court in the case of Corporation of the City of Nagpur v. Its Employees, AIR 1960 SC 675. It was held that only those functions which are inalienable can be called sovereign.

12. In case of Nagendra Rao and Co. v. State of Andhra Pradesh, JT 1994 (5) SC 572, it has been held by the Apex Court that one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in Courts of law. Acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory are functions which are indicative of external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil courts inasmuch as the State is immune from being sued in such matters. In a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital and because, of this the demarcating line between sovereign and non-sovereign powers has largely disappeared.

13. In the case of Agricultural Produce Market Committee v. Ashok Harikunt and Anr. etc., 2001 (1) AWC 2.1 (SC) (NOC) : AIR 2000 SC 3116, the Apex Court has considered as to what is a Sovereign function. The Apex Court has held as follows :

'In other words, it all depends on the nature of power and the manner of its exercise. What is approved to be 'Sovereign' is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain

territory. These are not amenable to the jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of State could not be construed as 'sovereign' exercise of power. Hence, every governmental function need not be 'sovereign'. State activities are multifarious. From the primary sovereign power, which is exclusively inalienable could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2 (a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be 'sovereign' in nature would not mean every other functions under, the same statute to be also sovereign. The Court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find it is 'industry' or not we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This is to the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the framework of the law but endeavour should not be in all circumstances to exclude any enterprise from its ambit. That is why Courts have been defining 'Industry' in the widest permissible limits and 'sovereign' functioning within its limited orbit.'

It further held the sovereign function in the new sense as follows :

'So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of 'sovereignty' but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by

finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non- sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro quo would also not make such enterprise to be outside the ambit of 'Industry' as also in State of Bombay case. AIR 1960 SC 610 (supra).'

14. The Apex Court came to the conclusion that Agricultural Produce Market Committee established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 is 'an industry'.

15. In the case of Des Raj and Ors. v. State of Punjab and Ors., (1988) 2 SCC 537, the Apex Court while applying the dominant nature test, as laid down in the Bangalore

Water Supply and Sewerage Board (supra), has held that the Irrigation Department of the State Government of Punjab is an industry.

16. In the case of General Manager, Telecom v. S. Srinivasa Rao and Ors. AIR 1998 SC 656 the Apex Court has held that the Telecom Department of the Union of India is an industry. It has held that the decision in the cases of Sub-Divisional Inspector of Post, Vaikam v. Theyyam Joseph, 1996 (2) AWC 721 (SC) : (1996) 8 SCC 489 and Bombay Telephone Canteen Employees Association v. Union of India, AIR 1997 SC 2817, does not lay down correct law. While holding so, the Apex Court has relied upon the Seven Judges' Constitution Bench decision in the case of Bangalore Water Supply and Sewerage Board (supra), and applied the principle laid down by the Apex Court in the aforesaid case and also in the case of Chief Conservator of Forests (supra).

17. In the case of Himanshu Kumar Vidyarthi (supra), the Apex Court has held that every Department of the Government cannot be treated to be 'Industry'. When the appointments are regulated by the statutory rules, the concept of 'industry' to that extent stands excluded and where temporary employees work on daily wages have been engaged, their disengagement from service cannot be construed to be

a retrenchment under the Industrial Disputes Act.

18. In the case of Yogesh Srivastava (supra), this Court has held that the Public Works Department of the State Government comes within the purview of Industrial Disputes Act and it is 'an industry' as defined under the provisions of Section 2 (k) of the U. P. Industrial Disputes Act, 1947.

19. In the case of Ghani Bahadur (supra) this Court has held that the Central Workshop, Public Works Department, which undertakes repairing work of Government vehicles is 'an industry' under the provisions of U. P. Act.

20. The Hon'ble Orissa High Court in the case of Executive Engineer, National Highway Baripada Division (supra), has held the National Highway Division under the Public Works Department to be an 'Industry'.

21. In the case of Management of Dandakaranya Project, Koreput v. Workmen through Rehabilitation Employees Union and Anr., 1997 Lab IC 858, the Apex Court has held that the rehabilitation project undertaken by the Government of India to rehabilitate the refugees from Pakistan, 'popularly known as 'Dandakaranya Project' is 'an industry' within the meaning of Section 2(j) of the Industrial Disputes Act.

22. In the case of Life Insurance Corporation of India and Anr. v. Raghavendra Seshagiri Rao Kulkarni, AIR 1998 SC 327, the Apex Court has held that where a clause in the letter of appointment of the employee on probation clearly stipulated that he could be discharged from service at any time during the period of probation without any notice or without assigning any cause, and he was discharged from service during probation in terms of Regulation 14 (4) of the Life Insurance Corporation of India (Staff) Regulations, 1960, such termination could not be held to be bad on ground of failure of Corporation to give opportunity of hearing to probationer and such termination also would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and therefore, it could not be said that since the requirements of Section 25F of that Act were not complied with, the termination would be bad.

23. In the case of State of Gujarat and Ors. v. Pratamsingh Narsinh Parmar, JT 2001 (3) SC 326, the Apex Court has held that in the absence of any assertion by the petitioners in the writ petition indicating the nature of duty discharged by the petitioners as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principle enunciated in the judgment of this Court in Jagannath Maruti Kondhare (supra), to hold that the Forest Departments could be held to be an industry.

24. In the case of State of Rajasthan v. Kunji Roman, 1997 (2) AWC 939 (SC) : AIR 1997 SC 693, the Apex Court has held that a work-charged establishment differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of funds for executing it. So far as employees engaged on work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment and thus form two separate and distinct classes.

25. In the case of Akhil Raj, Rajya Hand Pump Mistries Sangathan, Banswara and etc. v. State of Rajasthan and Ors., 1994 Lab IC 345, a Full Bench of the Hon'ble Rajasthan High Court has held that :

'Where there was no post of a hand pump mistries as such under the Panchayat Samitis engaging such mistries for effecting repairs of hand pumps and mistries were picked up and trained under certain scheme, with a view to generate self-employment for the rural youngmen, belonging to families below poverty line and they were trained at State expenses with the aforesaid specific object in view and no particular working hours were provided for such mistries and they were not required to mark any attendance in any attendance register and were free to engage themselves in vocations and callings of their own choice was never intended to be equated with a comment and there was no right in Panchayat Samiti to suspend Hand Pump Mistries but there was a right to deduct amount from their remuneration if they were not available when a hand pump is required to be repaired and there was no right in a Panchayat Samiti to hold a disciplinary

enquiry against the mistry, the mistries were not workmen.'

If further held that the contract of service and contract for service are different. Whereas a contract of service gives rise to relationship of master and servant, the contract for service does not.

26. In the case of M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and Anr., AIR 1994 SC 1343, the Apex Court has held that where the service of a probationer terminated without giving any notice in terms of the contract of employment read with Regulation 14 on the ground that he failed to achieve the target stipulated in the contract within the stipulated period, cannot be assailed for want of compliance of Section 25F of the Industrial Disputes Act. His termination has been effected under Regulation 14 and cannot be deemed to be retrenchment within Section 2(oo) of the Industrial Disputes Act being covered under the exemption Clause (bb) to Section 2(oo) validating such termination under a stipulation in that behalf contained in contract of employment.

27. In the case of Coir Board, Ernakulam Cochin and Anr. v. Indira Devi, P.S. and Ors., AIR 1998 SC 2801, a two Judges' Bench of the Apex Court has referred the matter to consider whether a larger Bench should be constituted to reconsider its earlier decision in the case of Bangalore Water Supply and Sewerage Board (supra).

28. In the case of Vishambar Singh Sikarwar v. UCO Bank, Calcutta and Ors., 1997 Lab IC 89, the Hon'ble Madhya Pradesh High Court has held that if a person has not been prevented by the employer from joining the duty, he cannot make any claim for payment of wages for that period.

29. In the case of Lal Mohammad and Ors. v. Indian Railway Construction Co. Ltd. and Ors., AIR 1999 SC 355, the Apex Court has held that the construction of railway line is manufacturing process and workers employed therein are workmen. The Apex Court has held as follows :

'While railway lines are being constructed on a given site no article or substance is being made or repaired, maintained, finished, etc. Raw materials like railway sleeper, bolts and loose railway rails when bought by the construction company from open market and brought on site or articles visible to eyes and are movable articles. These articles are adapted for their use. Their use is for ultimately laying down a railway line. In that process sleepers, bolts and rails would get used up. If that happens, the definition of 'manufacturing process' dealing with adaptations of these articles for use would squarely get attracted. It is true that the ultimate product of this exercise or process is the bringing into existence a railway track which is embedded in the earth which cannot be sold, transported, delivered or disposed of like a movable property. However, as the definition is worded, it cannot be said of necessity that any end product which results after adapting any raw-materials, articles or substance 'with a view to its use' must necessarily result into a movable final product or a commodity. It has to be kept in view that the definition of 'manufacturing process' in Section 2(k) of the Factories Act has nothing to do with manufacturing of good which may attract excise duty under the Central Excises and Salt Act, 1944. For the definition of 'manufacturing process' under Section 2(k) end product may be goods or otherwise. It is not necessary that the end product must be marketable. Even accepting that the final product namely, construction of railway line embedded in earth is not the subject-matter of sale, transfer, delivery or disposal, still the raw materials which are adapted for their use with a view to constructing railway lines which is the final product could be said to have fallen within the sweep of the definition of the term 'manufacturing process' as found in Section 2(k) of the Factories Act.'

It further held that the retrenchment notice which were issued without following the condition precedent to retrenchment of such workman as required by Section 25N, are necessarily to be treated as void and of no legal effect.

30. In the case of Suresh Chandra and Ors. v. State of U.P. and Ors., 2003 (1) ESC 551 (All), this Court has held that where a muster roll employee in the Irrigation Department is disengaged on the nonavailability of work whereas other muster roll employees engaged, the termination of service is violative of Article 14 of the Constitution of India.

31. Applying the principles laid down by the Apex Court in the aforementioned cases regarding dominant nature test and sovereign functions to the facts of the present case we find that the constructions and repairs of road undertaken by the Public Works Department cannot be said to be a sovereign function. The dominant nature is the construction activity undertaken by a Department of the Government in discharge of its being a welfare State. Thus, the Public Works Department of the Government of Uttar Pradesh is an industry and the provisions of the U. P. Act are applicable to it.

32. This brings us to the question as to whether the services of the writ petitioners could have been terminated without following the provisions of Section 6N of the U. P. Act or not. The fact that each of the writ petitioners have continuously worked for more than 240 days in a year during the period 1989-90, 1990-91 and 1991-92 till the preceding date of their retrenchment has not been specifically denied by the State respondents. Thus, the position is that each of the writ petitioners have worked for more than 240 days in a year prior to their retrenchment. In this view of the matter, the provisions of Section 6N of the U. P. Act are, clearly applicable. It is admitted that the provisions of Section 6N of the U. P. Act was not complied with while disengaging the writ petitioners. As neither any notice of retrenchment nor wages for the notice period nor any retrenchment compensation has been given, the order of retrenchment has rightly been set aside by the learned single Judge.

33. So far as the question of regularisation of their services is concerned, it may be mentioned here that the writ petitioners have not brought any material on record to show that under what Rules they are entitled for regularisation. They had only worked from 10th October, 1989 to 1 August, 1992.

34. In the case of Madhyamik Shiksha Parishad, U. P. v. Anil Kumar Mishra and Ors. etc., AIR 1994 SC 1638, the Apex Court has held that those persons who are working in the Education Board on ad hoc appointment on posts not sanctioned, no right of regularisation exists for such employees and attributing status of workmen under the Industrial Disputes Act to persons completing 240 days of work does not create right to regularisation.

35. It is well settled that in the absence of any Rules providing for regularisation of the service, the workman cannot as a matter of right claim to be regularised. In this view of the matter, we are of the considered opinion that the learned single Judge was not correct in law in directing for their regularisation of the service.

36. In view of the foregoing discussions, the special appeal is allowed in part and the judgment and order of the learned single Judge is modified and only that part of the Judgment by which the direction for regularisation of service has been given is set aside. However, the parties shall bear their own costs.