

J.J. Shrimali Vs. District Development Officer, Mehsana and ors.

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Court : Gujarat

Decided On : Aug-08-1988

Reported in : (1989)1GLR396

Judge : A.M. Ahmadi and; R.J. Shah, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 25B, 25C, 25E, 25F, 25FF, 25H, 25L and 25N; [Factories Act, 1948](#) - Sections 2

Appeal No. : Special C.A. Nos. 341, 2472, 2500, 2564, 2736 and 2788/1988

Appellant : J.J. Shrimali

Respondent : District Development Officer, Mehsana and ors.

Judgement :

Ahmadi, J.

1. The short question which arises in this batch of petitions brought under Art. 226 of the Constitution of India is whether 'Muster Karkoons' engaged on purely ad hoc and temporary basis for supervising scarcity relief works (or projects so called) started by the State Government and administered through the concerned District Panchayats are entitled to contend that their services cannot be terminated except in accordance with the provisions of the [Industrial Disputes Act, 1947](#) (hereinafter called 'the Act') notwithstanding the fact that their orders of

appointment clearly stated that their employment will terminate on the winding up of the scarcity relief works. Is it necessary to follow the provisions contained in Chapter V-A or V-B of the Act for terminating the services of the petitioners on the premise that such termination amounts to retrenchment in law. The orders of appointment issued by the District Development Officer, Mehsana, in terms provide that the appointments are made on purely ad hoc and temporary basis for the duration of relief works and shall automatically stand terminated on the closure of the relief works. Notwithstanding this condition of appointment the petitioners contend that since they have completed 240 days during a period of twelve calendar preceding the date with reference to which calculation is to be made, they must be treated as in continuous service for one year and would, therefore, be entitled to notice or wages in lieu of notice and retrenchment compensation before termination of their services.

2. 2. In the counter filed on behalf of the respondent-Panchayat it is stated that having regard to the serious drought conditions prevailing in the District of Mehsana since 1985-86 the State Government had started relief works to provide relief to drought affected people. The main object of these relief works is to provide succour to the drought affected people and not to construct roads, tanks, etc. These relief works are undertaken by the Government on humanitarian considerations to ensure that drought stricken people do not die because of starvation or lack of maintenance. The principle object of the State is to provide relief during the period of drought and scarcity conditions prevailed with a view to fulfilling its obligations under Arts. 38, 39 and 41 of the Constitution of India. The State as a sovereign power in a democratic set-up is charged with the duty to protect its people during severe drought and scarcity conditions. In response to these obligations the State Government undertook relief works in different Talukas of Mehsana District and entrusted the execution thereof to the District Panchayat. Since these relief works were stated in discharge of the sovereign function of the State, the respondents contend that such works cannot be termed 'industry' within the meaning of Section 2(j) of the Act. It is, therefore, contended that the provisions of the Act have no application and it is not obligatory on the part of the respondent Panchayat to follow the procedure for termination of service on the premise that it amounts to retrenchment within the meaning of Section 2(00) of the

Act. Alternatively it is contended that even if it is held that the provisions of the Act are attracted, the termination of service on the completion of relief works would not amount to retrenchment as the case would be governed by the newly inserted clause (bb) in Section 2(00) of the Act. Broadly stated, the defence is two-fold, namely, (i) that the relief works undertaken by the State Government and executed by the District Panchayat in discharge of the sovereign function of the State cannot, therefor, come within the meaning of 'industry' defined in Section 2(j) of the Act; and (ii) alternatively, even if it is assumed (though not admitted) that the petitioners have completed 240 days as alleged and the provisions of the Act apply, the termination of service of the petitioners cannot be termed 'retrenchment' within the meaning of Section 2(00) of the Act as the case falls within the exception contained in clause (bb) of the said definition.

3. The agricultural economy of Gujarat is heavily dependent on rainfall. On account of erratic rainfall pattern large areas of the State are often subject to scarcity and drought conditions year after year. Gujarat had the misfortune of facing three successive droughts. Practically the whole of the State fell a prey to the spectra of drought and famine, the ramifications whereof were far reaching so far as the agricultural economy was concerned. Valuable cattle perished in thousands for want of fodder and drinking water and out of exhaustion during their migration in search of fodder. The plight of agriculturists and cattle breeders was miserable; their lands lay parched and barren, their cattle dead and gone, their saving and valuables expended and their whole lives threatened by starvation and thirst for want of food grains and potable water. This was the unfortunate plight of people whose livelihood depended heavily on the vagaries of the monsoon. The District of Mehsana was of those areas which was severely affected because of drought and famine conditions. The State Government was obliged to take immediate steps to provide succour and relief to the famine stricken people of such areas. The nature of problems faced by people living in scarcity affected areas must necessarily differ from area to area. In an area inhabited by agricultural labour the problem may be to provide them temporary employment while in an area inhabited by cattle-breeders, the immediate task would be of providing fodder. Again in certain areas the problem may be of providing drinking water. A careful identification of the nature of problems is necessary for organising relief

measures. Earlier, relief measures during famine and scarcity were governed by the Famine Relief Code, 1885, but after independence, keeping in view the past experience and the roll to be played by a Welfare State under the Constitution, the Gujarat Relief Manual outlined the detailed procedure and policies of organising relief measures. In order to combat the problems arising on account of scarcity and drought conditions, the State Government machinery as well as a large number of voluntary organisations, public charitable trusts and humanitarian institutions teamed up to provide relief and succour to the unfortunate who were hard hit by nature's wrath. Thousands of people in different parts of the State affected by drought and scarcity conditions had to be provided at least half a loaf if not the full to survive the difficult period. Cattle camps had to be organised to save precious livestock. Financial assistance poured in from different sources besides the Central and State coffers. The State as well as panchayat machinery was geared up to meet the challenge. Relief works were opened in different Talukas of the District of Mehsana to provide sustenance to the drought affected people. The number of such unfortunate persons ran into thousands. Their livelihood was robbed because there was no agricultural activity on account of the failure of three successive monsoons. Not to hurt human dignity by distributing doles, the State Government started relief works or projects so called in different Talukas of Mehsana District to take work and pay wages for the same to the affected people. In order to supervise the activity at such relief works or projects, an administrative machinery had to be set up. The District Panchayats were, therefore, charged with the duty to gear up their own machineries for the execution of relief works sanctioned by the State Government within their areas. As the existing machinery of the Panchayats was not sufficient to cope up with the enormity of the task assigned to it, additional hands were required and for that purpose temporary and ad hoc appointments had to be made on each relief work or project. As payment was to be made to the affected people working at such relief projects, it was necessary to maintain musters to record their presence on day-to-day basis, the out-put of work, etc., and for that purpose 'Muster Karkoons' become necessary. Since a large number of persons had to be engaged to meet the challenge thrown by the drought, candidates who were on the waiting list of Talati-cum-Mantris were inducted as 'Muster Karkoons' on a clear understanding that the work was of a

purely temporary nature and co-extensive with the duration of the scarcity conditions. Workcharged Clerks were also engaged on the same terms and conditions. It is clear from the appointment orders produced by the petitioners that the incumbents were told in no uncertain terms that they were engaged on a purely ad hoc and temporary basis till the scarcity works are in progress and that their employment will terminate as soon as the scarcity works are wound up. It is in this background that we must examine the contention urged by the petitioners that the provisions of the Act, particularly Chapter V-A or V-B thereof, would be attracted if their services are sought to be terminated.

4. The Act was enacted to provide for the investigation and settlement of industrial disputes and for certain other purposes. The expression 'industrial dispute' as defined in Section 2(k) means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Section 2(j) defines 'industry' to mean any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The first part of the definition refers to business, trade, undertaking, manufacture or calling of employers which clearly indicates that it relates to employers engaged in the specified activities whereas the second part which includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen has reference to the activities of an employee. Section 2(s) defines a 'workman' to mean any person (including an apprentice) employed in any industry to do any manual unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Chapter V-A which came to be inserted on the statute book by Act No. 43 of 1953 with effect from October 24, 1953 is entitled 'Lay-Off and Retrenchment'. Sections 25C to 25E thereof do not apply to industrial establishments to which Chapter V-B applies or to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month or to industrial establishments which are of seasonal character or in which work is performed intermittently. Section 25B defines 'continuous service'. That definition is for the purposes of that Chapter alone. Sub-section (2) of that Section inter alia provides

that where a workman is not in continuous service for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year. If the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than two hundred and forty days. Section 25F lays down the conditions which an employer must follow before retrenching a workman. It says :

'No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette'.

Section 25FF speaks of payment of compensation to workmen in case of transfer of undertakings; Section 25FF provides for sixty days' notice to be given to intention to close down any undertaking; and Section 25FF provides for payment of compensation to workmen in case of closing down of undertakings. The principle of 'last-come-first-go' has to be ordinarily followed while effecting retrenchment (Section 25G). Section 25H provides for re-employment or retrenched workmen. The contention advanced on behalf of the petitioners is that since the petitioners have completed two hundred and forty days during a period of twelve calendar months preceding the date with reference to which calculations is to be made, they must be deemed to be in continuous service for a period of one year and would, therefore, be entitled to retrenchment compensation under Section 25F of the Act.

5. Chapter V-B was inserted by Act No. 32 of 1976 with effect from March 5, 1976. It lays down special provisions relating to lay-off, retrenchment and closure in certain establishments. The provisions of the said Chapter apply to an industrial establishment (nor being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. Section 25L provides the dictionary for the purposes of that Chapter and defines an 'industrial establishment' to mean : (i) a factory as defined in clause (m) of Section 2 of the [Factories Act, 1948](#); (ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952; or (iii) a plantation as defined in clause (f) of Section 2 of the plantations Labour Act, 1951. Section 25N on which reliance was placed by Mr. Nanavati provides that no workman in any industrial establishment to which Chapter V-B applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) workman has been given three months' notice in writing indicating the reasons for retrenchment and the notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette has been obtained on an application made in this behalf. It was contended that since more than one hundred workmen were employed on an average per working day for the preceding twelve months at the relief works or projects, retrenchment of such workmen could only be made in the manner set out in Section 25N of the Act. However, it must be noticed that for the purpose of the said Chapter a special definition for 'industrial establishment' is found in Section 25L and the relief works even if assumed to be 'industrial establishments' in the broader sense cannot come within the purview of the special definition contained in Section 25L set out above. It is, therefore, obvious that the provisions of Chapter V-B cannot apply to workmen engaged in relief operations. We must, therefore, reject the argument that in order to retrench the petitioners working at relief projects, recourse must be had to Section 25N of the Act. That being so, it will be necessary for us to consider whether the provisions of Chapter V-A of the Act stand attracted.

6. In order to attract the provisions of the Act, particularly Section 25F, it must be shown that the relief works or projects fall within the definition of an 'industry' found in Section 2(i) of the Act which reads as under :

"Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen.'

The Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa & Ors. (1978-I-LLJ-349) and (1978-II-LLJ-73), after taking note of the tests laid down by the Court in D. N. Banerjee's case (AIR) 1953 SC 58, the Corporation of the City of Nagpur v. Its Employees, (1960-I-LLJ-523); and the State of Bombay v. Hospital Mazdoor Sabha, (1960-I-LLJ-251) and after overruling the decisions in National Union of Commercial Employees v. M. R. Maher, Industrial Tribunal, Bombay, AIR) 1962 SC 1080; The University of Delhi & Anr. v. Ram Nath & Ors., (1963-II-LLJ-335); Madras Gymkhana Employees' Union v. Management, (1967-II-LLJ-720); Cricket Club of India v. Bombay Labour Union, (1969-I-LLJ-775); The Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1970-II-LLJ-266) and Dhanrajgiri Hospital v. The Workmen, (1975-II-LLJ-409), formulated the tests for determining whether a given activity falls for determining of 'industry' in Section 2(j) as under (1978-I-LLJ-349 at 404-405) :

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

I. (a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element 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 services geared to celestial bliss i.e. making on a large scale, prasad or food) prima facie is an 'industry' in that enterprise.

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

(c) the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) 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, their meaning cannot be magnified to overreach itself :

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerjee 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), although not trade or business, may still be 'industry' provided the nature of the activity, viz., the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings, calling and services, adventures 'analogous to the carrying on of trade or business'. All features, other than the methodology of carrying on the activity viz, in organizing the co-operation 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 outer 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 workmen, 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) co-operatives, (v) research institutes, (vi) charitable projects, and (vii) other kindred adventures, if they fulfill the triple tests listed in I(supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures substantially and, going by the dominant nature criterion, substantively, no employees are entertained but 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 a free medical centre or ashramites working at the bidding 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, then the institution is not an industry even if stray servants, manual or technical are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity, compassion, development 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 'workmen' 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 service 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'.

7. It was submitted on behalf of the petitioners that the nature of activity undertaken by the State Government and executed through the agency of the

District panchayat answer the requirements of the first test inasmuch as it was a systematic activity organized by co-operation between the Government and the District Panchayat on the one hand and the workers employed at the relief works on the other to satisfy human wants and merely because it lacked the element of gainful objective and was actuated by humanitarian and philanthropic considerations it could not fall outside the areas of wide amplitude employed by the legislature in Section 2(j). On the other hand, it was contended on behalf of the respondents that the activity was not a systematic activity in the sense that its primary objective was not to undertake any commercial activity of constructing roads, dams, etc., but the paramount idea was to provide relief and succour to the scarcity affected people which was an obligation on the State sought to be fulfilled with the help of not only Central and State assistance, but also assistance from voluntary agencies, public charitable trusts and humanitarian institutions and financial assistance from the people of the State. In so far as the State's obligation is concerned, the State was merely performing its sovereign function as distinguished from a commercial adventure and therefore, the case fell within the exception set out in clause (b) of the dominant nature test evolved by the Supreme Court. We are inclined to think that the plea put forward on behalf of the respondents must prevail.

8. Under our Constitution we have established a welfare State whose functions extend beyond the traditional function of maintenance of law and order. Under Art. 298 the executive power of the State extends to the field of commerce, namely, carrying on of any trade or business. This Article read in the context of Arts. 12 and 19(1)(g) and the Directive Principles contained in Part IV of the Constitution make it clear that the activities of the State are intended to travel beyond the traditional role of maintenance of law and order. The definition of 'employer' in Section 2(g) supports the view that the provisions of the Act would apply in cases where the activity of the Government or local authority embraces commercial fields. Therefore, when the Government operates in the field of commerce and industry, the provisions of the Act would apply to them but they would have no application if the activity or function is governmental or sovereign in character. In the State of Bombay v. Hospital Mazdoor Sabha, (supra) it was pointed out that the activities of the Government, which can be properly described as regal or

sovereign activities are outside the scope of 'industry'. That is why, in the *Corporation of the City of Nagpur v. Its Employees*, (supra). Subba Rao. J., observed that it would not have been in the contemplation of the legislature to bring in the regal functions of the State within the definition of 'industry' and thus confer jurisdiction on Industrial Tribunals to decide disputes in respect thereof. After referring to these decisions Krishna Iyer. J., in *Bangalore Water Supply case* (supra), observed as under in paragraphs 46 and 47 of the judgment (pp 374-375) :

46. The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for other compelling reasons, be kept out of the scope of industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed 'the primary and inalienable functions of the Constitutional Government'. Even here we may point out the inaptitude of relying on the doctrine of regal powers. That has reference, in this context, to the Crown's liability in tort and has nothing to do with industrial law. In any case, it is open to Parliament to make law which governs the State's relations with its employees. Article 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the [Industrial Disputes Act, 1947](#). That is a question of interpretation and statutory exclusion; but in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like Public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of Constitutional Government. In a limited way, this head of exclusion has been recognised throughout

47. Although we are not concerned in this case with those categories of employees who particularly come under departments charged with the responsibility for essential Constitutional functions of Government, it is appropriate to state that if there are industrial units severable from the essential functions and

possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertaking are industries. A blanket exclusion of every one of the host of employees engaged by Government in departments falling under general rubrics like, justice, defence, taxation, legislature, may not necessarily be thrown out of the umbrella of the Act. We say no more except to observe that closer exploration, not summary rejection, is necessary'.

In this connection Beg. C.J., who wrote the concurring judgment observed as under (p 352) :

'What is meant by the use of the term 'sovereign', in relation to the activities of the State, is more accurately brought out by using the term 'Governmental' functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and Constitutional provisions, such as Arts. 310 and 311 should, strictly speaking be excluded from the sphere of industry by necessary implication'.

Proceeding further the learned Chief Justice said as follows (p 352) :

'If express rules under other enactments govern the relationship between the State as an employer and its servants as employees it may be contended, on the strength of such provisions, that a particular set of employees are outside the scope of the Industrial Disputes Act for that reason'.

The question then is, whether the District Panchayat was executing the scheme of the State Government introduced for providing relief to the drought affected persons in discharge of its governmental or sovereign functions Placing reliance on the decision of the Court in *P. W. D. Employees' Union v. State of Gujarat* (1988-I-LLJ-524), it was argued that the construction of dams and allied activities being a welfare activity or an economic adventure undertaken by the Government, cannot *stricto sensu* be described as an activity undertaken in the discharge of governmental or sovereign functions.

9. When a State Government during famine and drought undertakes relief works intended to provide the much needed relief to scarcity affected people living in

affected areas, it is not embarking upon any industrial or commercial enterprise but is merely trying to fulfill its obligation towards its people who are hit by nature's wrath. There is no desire or intention to launch a durable industrial or commercial enterprise but the paramount idea or consideration is to provide relief to the scarcity affected people who have been deprived of livelihood because of the failure of the monsoon. Since our agricultural economy depends heavily on the vagaries of the monsoon, failure of the monsoon and that too in successive three years, is bound to adversely affected people dependent on the monsoon. In rural areas failure of the monsoon would result in stoppage of all agricultural activities and those dependent on work in the fields would suddenly find themselves deprived of their livelihood. In such a situation the State machinery must step in to provide relief and succour to the affected people. It, instead of distributing doles which may hurt dignity, self respect and sentiments of those receiving the same, the State Government introduces schemes which would provided temporary work to the affected people and pays for the same, can it be said that the State has embarked on a commercial or industrial activity so as to label relief works or projects as 'industry'? As pointed out earlier, the paramount idea is to provide relief for tiding over the difficult period and it matters not whether the work undertaken is completed or not; the relief work or project will be wound up once nature showers its bounties in the affected area. It seems clear to us that by starting relief works or projects, the State Government is merely fulfilling its governmental duty towards the scarcity affected people and is not operating in the field of commerce or industry for the production or distribution of goods or services.

10. Again it must be realised that scarcity relief works are only temporary in character and are not goal-oriented. Their duration is limited to continuance of scarcity conditions. Once these conditions disappear and agricultural activity commences, the need to provide relief ceases and the works and projects have to be wound up. If the beneficiaries of relief works are farm workers and those connected with agriculture, they will themselves leave the work sites and the relief works will automatically come to an end. Besides, once scarcity conditions disappear and work is available in fields, State's obligation to provide relief also comes to an end and the State can ill afford to fritter away its resources by continuing the works or projects. From the inception the State has not intended to

undertake a recurring financial liability, it had merely undertaken the obligation to provide relief to the scarcity affected people during the continuance of scarcity conditions. It is, therefore, obvious that the works or projects were purely temporary, started with a view to providing relief to the scarcity affected people during the continuance of scarcity conditions and not beyond the period. That is why the petitioners were also told while making their appointments that their engagements were purely ad hoc and temporarily and will ensure until the scarcity conditions continue and will cease the moment those conditions cease to exist. It could never have been the intention of the authorities to continue 'Muster Karkoons' when the beneficiaries of the scarcity works had left the work site and there was nothing left to record in the musters.

11. A relief work has, therefore, to be viewed differently from the ordinary activity of the State when it undertakes projects such as construction or maintenance of roads, dams, etc., with a view to serving the community at large. In such cases the paramount intention is not to provide relief to people hit by the wrath of nature but to serve the community at large. That is why Gajendragadkar, J., in *Hospital Mazdoor Sabha's case* (supra) observed that 'It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) '. In the above special facts and circumstances of the case and having regard to the avowed purpose and object of the relief undertakings, specially its character, it is difficult to hold that the undertakings attract the definition of 'industry' in Section 2(j) of the Act. In our view, the tests laid down by the Supreme Court in *Bangalore Water Supply and Sewerage Board case* (supra) are not satisfied.

12. In *P.W.D. Employees' Union* (supra) the question which arose for consideration was whether daily rated labourers on the nominal muster roll of the P.W.D. (Irrigation) employed for diverse works in connection with the construction and maintenance of medium sized irrigation undertaken by the State Government can be said to be 'workmen' under Section 2(s) of the Act. The petitioner there in had put in service ranging from one year to about eleven years. All of them had completed continuous service of 240 days in a year. Their services came to be terminated without any notice whatsoever. They therefore, approached this Court

for quashing and setting aside their impugned terminations and for directing the respondents to reinstate them in service with continuity and full back wages. The orders of termination were challenged principally on the ground that they were in violation of Section 25F of the Act. The petition was resisted on the ground that construction and maintenance of the dam cannot be said to be an 'industry' within the meaning of Section 2(j) of the Act and, therefore, the matter fell outside the purview of the Act; the termination order being the outcome of the exercise of sovereign functions of the State in the construction of dams for irrigation purposes, vide Entry 17 in List II of the Seventh Schedule to the Constitution. Secondly, it was contended that casual labour placed on nominal muster roll cannot claim any right to continue in service and that their services could validly be terminated on the completion of the work for which that were engaged. Whether construction and maintenance of the dam can be said to be an 'industry' was one of the questions which the Court was required to consider. After referring to the decisions of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra), this Court came to the conclusion that the activity in question was an 'industry' within the meaning of Section 2(j) of the Act and hence the petitioners could not be said to have been discharged in exercise of sovereign functions, *stricto sensu*, and since they had completed 240 days it was obligatory on the part of the department to comply with the requirements of Section 25F of the Act. Non-compliance with the requirements of the said provisions was held to render the impugned orders of termination illegal.

13. Reliance was also placed on the decision of the Supreme Court in *Jaswant Singh v. Union of India* (1979-II-LLJ-371) wherein some of the petitioners were appointed before 1st November, 1966, the date of coming into force of the Punjab Re-organization Act, by Beas Control Board. Subsequently, they became employees of the Beas Construction Board by virtue of the first proviso to Section 80(3) of the Punjab Re-organization Act when the Beas Control Board came to be replaced with effect from 1st October, 1967. The other petitioners were appointed directly by the Beas Construction Board itself. The appointments of all the petitioners were purely temporary for the construction and completion of the works of the Beas Project. On completion of the Beas Project, they were retrenched in accordance with the terms of their employment.

14. The entire labour force employed for the purpose of the Beas Project was work-charged. A work-charged establishment is one of which the expenses, including wages and allowances of the staff, are chargeable to works. The work-charged employees were engaged on temporary basis and their appointments were to enure upto the completion of the specified work. It was held that though the work-charged employees were not entitled to benefit under the Payment of Gratuity Act, or under the Employees' State Insurance Schemes, they being industrial workers, were entitled to the benefits of the provisions contained in Chapter V-A of the Act.

15. It will be seen from the facts stated above that in those cases a systematic and carefully chosen activity was undertaken in the industrial and commercial field for serving the needs of the community with the participation of labour. There the paramount idea was to provide material services to the community with the co-operation of labour unlike in the present case. Here the sites were not chosen but the compulsion of the situation necessitated undertaking of the works in the affected areas only. Industrial or commercial growth of the area is not the aim but the paramount idea is to provide immediate and much needed relief to the affected people. But for drought and the need to help the affected people, these works would never have been undertaken. The completion of the work is of secondly importance in such cases unlike in the cases cited at the bar. It was not a regular activity undertaken for the construction of roads or tanks although incidentally such work may have been done. The co-operative effort was between the drought victims on the one hand and the State on the other to provide relief to the former till the conditions improved. It was not an effort between employer and employees. Unlike in the two cases relied on where the activity was undertaken with the paramount idea of completing an engineering project with the help of labour, in the present case the objective was to fulfill a governmental duty to provide relief to victims of drought and if construction of roads or tanks was adopted as a mode for providing relief that cannot change the basic character of the activity. We are, therefore, of the view that the character of the activity was different in the cases relied on as compared to the one in this case. In the present case the Muster Karkoons were employed for the limited purpose and not as a part of any co-operative effort to complete any activity analogous to business or industry. We,

therefore, think that the two cases relied upon have no application to the facts of this case.

16. The next question is whether the termination of service of the petitioner amounts to 'retrenchment' within the meaning of Section 2(00) of the Act. We proceed to answer this contention on the assumption that we are wrong on the first point. The term 'retrenchment' was not defined by the Act as originally enacted but came to be inserted for the first time by Act No. 43 of 1953. When introduced it read as under :

'2(00) '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

(c) termination of the service of a workman on the ground of continued ill-health'.

The opening words of the definition show that termination of service of workman by the employer for any reason whatsoever except by way of punishment, voluntary retirement, on superannuation or on account of ill-health of the workman, will amount to retrenchment. So the opening part says what retrenchment is while the latter part enumerates the exceptions. However, the words 'termination by the employer' imply a conscious and deliberate act on the part of the employer to terminate the service of the workman for whatsoever reason. Now termination of employment may be for diverse reasons, e.g., rationalisation and restructuring of services, installation of new automatic machines, economy drive, stock-piling, etc. If the services of the workman have been terminated otherwise than by way of disciplinary action or voluntary retirement or retirement on superannuation or on the ground of continued ill-health, the termination will amount to 'retrenchment'. But then by Act No. 49 of 1984 the legislature stepped in and inserted clause (bb)

to Section 2(00) which reads as under :

'(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'.

On a plain reading of this clause it is obvious that it excludes from retrenchment cases of (i) termination of service of a workman on account of non-renewal of the contract of employment on its expiry and (ii) loss of service on the termination of the contract of employment in terms of a stipulation contained in such contract. Thus termination of service due to the non-renewal of the contract of service which had expired or termination of employment as per a stipulation contained in the contract of employment in that behalf falls outside the scope of 'retrenchment' in Section 2(00) of the Act and the workman whose services have been so terminated will not be entitled to the benefit of Section 25F of the Act. The addition of this clause (bb) in Section 2(00) has the effect of making inroads in the ratio laid down by the Supreme Court in *State Bank of India v. Sundramoney*, (1976-I-LLJ-478), *Hindustan Steel Ltd. v. State of Orissa*, (1971-I-LLJ-1), *Santosh Gupta v. State Bank of Patiala*, (1980-II-LLJ-72), *L Robert D'Souza v. Executive Engineer, Southern Railway*, (1982-I-LLJ-330), etc.

17. In the cases on hand the appointment order in terms provided that the appointment was being made on purely ad hoc and temporary basis and was to last till scarcity works were in progress and that the services will be liable to termination without notice and without assigning any reason whatsoever. Thus the contract of employment carried a stipulation that the services of the petitioner will end as soon as the scarcity relief work is wound up or ceases. The petitioner were, therefore, told in no uncertain terms that the duration of their engagement was co-extensive with the duration of the scarcity relief works meaning thereby that their service will end on the closure of the relief works. It was said that clause (bb) will not be attracted as the duration of the contract of employment is not fixed. We are not impressed by this submission. What clause (bb) requires is that the contract of service must be terminated under a stipulation contained therein. In the present

case the stipulation is that on a particular event happening viz., conclusion of the scarcity relief operation, the contract of service will come to an end. That clearly falls within the second part of clause (bb). We are, therefore satisfied, that clause (bb) takes the termination in the present case outside the purview of 'retrenchment' defined in Section 2(00) and, therefore, the provision of Section 25F of the Act will not be attracted.

18. We may incidentally mention that those employees who were on work-charged establishments elsewhere before they were drafted for scarcity relief works will have to be sent back to their respective establishments on the closure of scarcity relief works or projects and thereafter be dealt with in accordance with law. We may make it clear that our conclusion regarding the non-application of the provisions of the Act to relief works or projects with which we are presently concerned should not be understood to apply to other regular work-charged establishments also to which the employees would revert.

21. In the result all the petitions fail and are dismissed. The Rule in Special Civil applications Nos. 2464 and 2736 of 1988 shall stand discharged. In all the other petitions the notice issued pending admission will stand discharged. The interim relief granted in each matter to stand vacated. There will be no order as to costs in any matter.

(Rest of the judgment is not material for the Reports)