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**Rakesh Kumar Srivastava and Others Vs. State of U.P. and Others**

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**Court** : Allahabad

**Decided On :** Mar-01-2011

**Judge** : Rajiv Sharma, J.

**Acts** : Departmental Regular Rules, 1996,; Krishi Utpadan Mandi Adhiniyam, 1964 - Section 26-X; Centralized Service Regulations, 1984 - Regulation 29, 2 (3); Industrial Disputes Act,

**Appellant** : Rakesh Kumar Srivastava and Others

**Respondent** : State of U.P. and Others

**Advocate for Def.** : Sri. Mehrotra

**Judgement** :

1. Petitioners have filed the aforesaid batch of writ petitions assailing either the orders of their termination from service or disengagement or claiming regularization of service on different posts in the Mandi Parishad. According to the petitioners' Counsel, petitioners were engaged as Work charge/Muster Roll/on consolidated pay under the contingency limit in various construction divisions of the Rajya Krishi Utpadan Mandi Parishad.

2. It has been submitted on behalf of the petitioners that in Mandi Parishad there are three categories of employees, namely, (1) those appointed on regular basis against duly sanctioned posts in accordance with the service regulations in the establishment of the Mandi Parishad (2) persons engaged on daily wages, fixed

pay, contract against sanctioned posts in the establishment of Mandi Parishad and (3) the third category, consists work charge, Muster Roll and fixed pay employees engaged within 2% contingency limit as per the policy/practice of the Board. Under the work charge and muster roll employees, there is another category comprising Diploma Holder Engineers, who were engaged for discharging the duties on the post of Junior Engineer(Civil)/E & M.

3. On 12.2.1999, the State Government issued a Government Order for terminating the service of employees, who were allegedly, appointed against various categories of posts during the period 1.4.1996 to 30.10.1997. Consequently, directions were issued by Mandi Parishad for terminating the services of the irregularly appointed employees including the contingency limit employees also, if they were in excess of 2% contingency limit calculated on the basis of the total project cost. According to the petitioners, the said G.O. dated 12.2.1999 did not pertain to the contingency fund employees, even then their services were also terminated.

4. Aggrieved by the arbitrary actions of the respondents, large number of the petitioners filed writ petitions before this Court. Vide judgment and order dated 11.8.2000, writ petitions were allowed by the learned Single Judge, as also by a Division Bench vide judgment and order dated 5.9.2000. However, one of the writ petitions i.e. writ petition no. 1093 (SB) of 1999; Anshuman Mishra vs. State of U.P. and others was dismissed. The judgment and order dated 5.9.2000 passed by a Division Bench was assailed by the State Government before the Apex Court. The Apex Court vide judgment and order dated 16.12.2005 allowed the Appeal and set-aside the judgments of the High Court. Subsequently, a number of clarification applications were filed before the Hon'ble Supreme Court by the persons, who were engaged under the contingency limit and who were again disengaged from service after pronouncement of judgment dated 16.12.2005. In I.A.No. 326-328 in C.A. No. 7555-7556/2001 and connected matters the following orders were passed on 2.5.2006:-

**"It is stated at the Bar that although this Court in its judgment dated 16.12.2005 specifically dealt with the cases of those employees who are affected by order dated 12.2.1999 issued by the Board in terms of the policy decision of the State and who had been appointed during the period from 1.4.1996, the cases of others who had also filed writ applications before the Allahabad High Court had not been dealt with. Certain observations have been made in the judgment in the aforementioned case. Mr M. L. Verma, learned Senior Counsel states that in the event this Court makes an observation that in this Court's judgment dated 16.12.2005, the cases of other category of employees had not been dealt with by this Court, the High Court's judgment shall prevail. Mr M.L.Verma, learned Senior Counsel furthermore states that the applicants herein were not covered by this notification dated 12.2.1999 but by an order 4.11.1998."**

**In view of the stand taken by the learned counsel appearing for the parties, we are of the opinion that it is necessary for this Court to deal with the cases of other category of employees also."**

**Let notices be issued in the remaining matters..."**

5. Subsequently, by means of an order dated 19.9.2006, the Hon'ble Supreme Court modified and clarified its earlier judgment dated 16.12.2005. The relevant extract of the judgment dated 19.9.2006 reads as under:-

**"Some of the applicants were parties before the High Court and consequently before us. However, it is accepted at the Bar that the High Court had not dealt with their contentions in the judgment impugned before us which was the subject matter of judgment dated 16.12.2005. This Court has also not dealt with the contentions raised by the said parties specifically. We would, therefore, in modification of our judgment dated 16.12.2005, direct the High Court to consider the matter afresh but subject to the observations**

**made therein"**.

6. It is in this background that the petitioners moved amendment applications in the decided writ petitions preferred by them. It may be noted that certain persons filed fresh writ petitions. There are some petitioners who did not prefer any IA application before the Apex Court but have filed amendment applications and their matter has also been connected.

7. It has been argued on behalf of the petitioners that as per the report of the Director, Mandi Parishad dated 20.3.1999, the services of the employees were to be terminated, if they were in excess of 2% contingency limit as on 1.4.1998 but in some cases 2% contingency limit had been calculated on the basis of project expenditure and not the total project costs, resulting in arbitrary orders of termination. Referring to writ petition no. 2353(SS) of 1999; Pawan Kumar Srivastava and others vs. State of U.P. and others, Counsel for the petitioners submitted that the Deputy Director, Construction sent an information on 5.2.1998 to the Headquarters indicating therein that Work charge, Muster Roll and Fixed pay employees working in the Division were within 2% contingency limit. Since the cut-off date for calculating the said limit was 1.4.1998 and as such the termination of their services was unjustified and arbitrary. Thus, it is evident that termination orders of the contingency fund employees were issued mechanically without any application of mind in view of the G.O. dated 12.2.1999.

8. In writ petition no. 3328 (SS) of 1999, no.3329 (SS) of 1999, no.5216 (SS) of 2000, no. 3700 (SS) of 1999, No.3619 (SS) of 1999 and No.1782 (SS) of 1999, petitioners have challenged their orders of termination dated 31.5.1999, 5.6.1999, 14.10.1999 and 24.3.1999 as well as orders dated 26.12.2005, 27.12.2005, 31.12.2005 and 16.12.2005 by which they were again disengaged from service after the judgment of the Hon'ble Supreme Court dated 16.12.2005. These petitioners were initially engaged as Mandi Sahayaks and Care Takers on fixed salary of ` 1688/-, ` 1744 and ` 3323/-.

9. The above mentioned writ petitions of the petitioners were allowed alongwith a bunch of writ petitions leading writ petition No. 1346 (SS) of 1999 Mukesh Kumar and others v. Rajya Krishi Utpadan Mandi Parishad, U. P. and others. Thereafter,

petitioners were reinstated in service after pronouncement of the judgment and order dated 11.8.2000 and since the said judgment was not stayed by the Hon'ble Supreme Court, when the same was challenged by the respondents, the petitioners continued to be in service till 16.12.2005 when they were again disengaged after pronouncement of the judgment by Hon'ble the Supreme Court on 16.12.2005 whereby the judgment dated 11.8.2000 passed by this Court was quashed.

10. Later on, petitioners filed interlocutory application nos.325, 326-328, 329, 338-340 and 349-350 before Hon'ble the Supreme Court seeking clarification/modification of the judgment dated 19.9.2006 and the Apex Court clarified and modified its earlier judgment dated 16.12.2005 and issued a direction to the High Court for considering the writ petitions as it had not considered the validity of the termination orders of the Gate Pass Barrier Scheme. Liberty was granted to the petitioners herein to amend the writ petitions and respondents were given liberty to file counter-affidavit to the amended writ petitions. Subsequently, applications for amendment were allowed and the amended writ petitions were filed. Some of the respondents in the aforesaid writ petitions filed their counter-affidavit to which rejoinder affidavits have also been filed.

11. According to Sri Kalia, the Gate Pass Movement Scheme introduced in the year 1995 by 'Mandi Parishad' yielded good result on account of commendable services rendered by the petitioners. Considering the excellent services of the petitioners and also considering the fact that because of diligence of the petitioners, 'Mandi Samiti', Ghaziabad has been able to effectively control the illegal transfer of agricultural produce to other States and it had also succeeded in checking the evasion of Mandi fees, a proposal was initiated by the Secretary of Mandi Samiti, Ghaziabad for giving them regular pay scale and for allowing them to continue on their respective posts till the availability of regularly selected candidates. The said proposal was forwarded by the Deputy Director (Administration), Rajya Krishi Utpadan Mandi Parishad, Meerut to the Additional Director (Administration) at Lucknow. The Additional Director (Administration) accordingly approved the said proposal on 17.4.1997 and all the petitioners since 17.4.1997 were paid their salaries in the regular pay scale, as admissible to the

regularly selected employees. Mandi Sahayaks were paid the pay scale of `.950-1300 whereas Mandi Abhirakshaks were paid the pay scale of ` 750-1050.

12. By an order dated 20.4.1999, the Scheme known as 'Gate Pass Movement Scheme' introduced vide Circular dated 06.10.1995 was postponed. By the said order, it has also been directed that the services of the employees working on the Gate Pass Collection Center established at the border be terminated and the work be taken from the regularly appointed incumbents by the Mandi Samiti concerned. It also provided that if the services of those employees other than the regular incumbents be terminated, if their services are not required by Mandi Samiti concerned and their number exceeds accepted Staffing Pattern.

13. It has been pointed that such petitioners were not only given the regular pay scale, but were also given all the admissible allowances like Dearness Allowance, House Rent Allowance, Medical Allowance, Interim Relief, CCA etc. Petitioners were even insured under the Group Insurance for which the premium was paid by the Mandi Samiti, Ghaziabad itself. This clearly establishes that the petitioners were given all the facilities available to a regular employee since they have been performing all the duties and functions of a regular employee.

14. Clarifying the position, Sri Kalia submitted that such petitioners were not appointed during the period between 1.4.1996 and 30.10.1997 neither their services were terminated pursuant to the order of the Government dated 12.2.1999 and as such, the petitioners have challenged their orders of termination which states that since Gate Pass Scheme has been put to an end and as such, the services of the petitioners are no more required.

15. According to him, action of the respondents is wholly untenable as petitioners were initially appointed in the year 1995 on a consolidated salary but later on considering their commendable services rendered by them to the respondents, which not only enhanced revenue income of the 'Mandi Samiti' but also prevented illegal transaction of agriculture produce from the State of U.P. to other States, the petitioners were adjusted in the regular establishment of the 'Mandi Samiti' and were given regular pay scale admissible to the regularly selected employees of the posts on which the petitioners were initially appointed in the year 1995.

16. Sri Rajan Roy, Advocate appearing in Writ Petition No. 2353 (SS) of 1999 and other petitions, referred to hereinafter, submitted that the petitioners in this petition have challenged the termination order dated 15.3.1999 as well as orders dated 30.1.2006, 16.12.2005 and 5.5.2006 by which they were again disengaged from service after the judgment of the Hon'ble Supreme Court dated 16.12.2005. Petitioner nos.7 and 8 were appointed on Muster Roll basis on 16.8.1995 and 1.3.1996 respectively under the contingency fund on wages of ` 1,050/- per month. Their services were terminated vide order dated 15.3.1999. Being aggrieved, petitioners filed the aforesaid writ petition challenging the above mentioned termination orders as well as Government Orders dated 12.2.1999 and 17.3.1999. The said writ petition was allowed vide judgment dated 11.8.2000 alongwith a bunch of writ petitions.

17. Consequently, Petitioners were reinstated in service after the pronouncement of the judgment dated 11.8.2000 and since the said judgment was not stayed by the Hon'ble Supreme Court when the same was challenged by the opposite parties, petitioners continued to be in service till 16.12.2005 when they were again disengaged after the pronouncement of the judgment of Hon'ble Supreme Court on 16.12.2005 whereby the judgment dated 11.8.2000 passed by this Court was quashed.

18. Petitioner Nos.7 and 8 filed I.A. No. 380/2007 before the Hon'ble Supreme Court seeking clarification/modification of the judgment and Hon'ble Supreme Court by means of the judgment dated 19.9.2006 clarified and modified its earlier judgment dated 16.12.2005 and issued a direction to the Hon'ble High Court for considering the writ petitions as it had not considered the validity of the termination orders of the contingency fund employees.

19. In Writ Petition No. 2177 (SS) of 1999, petitioners were engaged in the Mandi Parishad under the contingency head. Petitioner No.2 was engaged as Diploma Holder Engineer on 1.4.1997 on consolidated salary of ` 3500/-, whereas petitioner No.4 was engaged as Diploma Holder Engineer on 11.10.1996 on Muster Roll basis and subsequently with effect from 1.4.1997, he was appointed on consolidated salary of `1,800/- per month. Being aggrieved, petitioners filed the

aforesaid writ petition challenging the above mentioned orders of their termination from service including the G.O. After the judgment of the Apex Court, petitioner Nos.2 and 4 filed IA No.342/2006 before the Hon'ble Supreme Court seeking clarification/modification of the judgment and the Hon'ble Supreme Court by means of order dated 19.9.2006 clarified and modified its earlier judgment dated 16.12.2005 and issued a direction to the Hon'ble High Court for considering the writ petitions as it had not considered the validity of the termination orders of the contingency fund employees.

20. Similarly, in Writ Petition No.4630 (SS) of 1999, petitioner No.3 was appointed under the contingency head as Diploma Holder Engineer on Muster Roll basis by the Director, Mandi Parishad and he continued in the said capacity upto 11.2.1996 and from 12.2.1996 till the termination of his services on 7.5.1999. This petition has been filed inter alia seeking the quashing of the termination order dated 7.5.1999 and also seeking regularization of services. The instant writ petition was decided along with the bunch of writ petitions leading writ petition bearing No.1346 (SS) of 1999 Mukesh Kumar and others v. Rajya Krishi Krishi Utpadan Mandi Parishad and others vide judgment dated 11.8.2000. The aforesaid judgment was challenged before Hon'ble Supreme Court by means of Civil Appeal No. 7601-7623 and several other connected Civil Appeals which were finally decided on 16.12.2005. Thereafter only petitioner No.3 filed an application bearing IA No.341 of 2006 for clarification of the judgment dated 16.12.2005 wherein the Hon'ble Supreme Court passed the judgment dated 19.9.2006 clarifying and modifying the judgment dated 16.12.2005 with a direction to the High Court to consider the matter afresh and with liberty to the applicant to file an application for amendment of the writ petition.

21. In writ petition No.606 (SS) of 2001, the petitioner was appointed as Diploma Holder Engineer on Muster Roll basis on 1.11.1996. The aforesaid writ petition was filed assailing the termination order dated 7.6.1999 by which services of the petitioner, who was engaged as Junior Engineer on Muster Roll basis, were terminated alongwith the hundreds of other similarly situated persons. A conjoint reading of the termination order of the petitioner with the termination orders passed in other similar connected matters will show that the instant writ petition is

similar to the other connected writ petition. In fact, the instant writ petition was filed subsequently after the judgment dated 11.8.2000 was rendered by the learned Single Judge in bunch of writ petitions leading Writ Petition bearing No. 1346 (SS) of 1999, Mukesh Kumar and others v. Rajya Krishi Utpadan Mandi Parishad and others and by means of an interim order, the benefit of the aforesaid judgment dated 11.8.2000 was extended to the petitioner of the instant writ petition and he was reinstated in service. The above referred writ petition remained pending and in the interregnum the judgment dated 16.12.2005 was pronounced by the Hon'ble Supreme Court in the case of Neeraj Awasthi and other connected matters including Writ Petition No. 1346 (SS) of 1999 and in pursuance of the aforesaid judgment dated 16.12.2005, petitioner was also disengaged from service as the other petitioners of the connected writ petitions were disengaged.

22. In these circumstances, some of the persons who were parties before the Hon'ble Supreme Court and others who were not parties before the Hon'ble Supreme Court nor were they parties in the bunch of writ petitions decided on 11.8.2000 by the Hon'ble Single Judge, filed interim application seeking clarification of the said judgment and the Hon'ble Supreme Court vide its judgment dated 9.9.2006 was pleased to clarify and modify the judgment dated 16.12.2005 directing the High Court to re-consider the matter afresh granting liberty to the applicants to file amendment application before the High Court. In these circumstances, since the instant writ petition of the petitioner was already pending, as such an application for amendment was filed by the petitioner assailing the subsequent disengagement from service in pursuance of judgment of the Hon'ble Supreme Court in Neeraj Awathi's case.

23. In writ petition No. 3154 (SS) of 2007, the petitioner was appointed under the contingency head as Diploma Holder Junior Engineer on 5.11.1996 in accordance with the procedure prevailing at the relevant time. The petitioner had earlier filed Writ Petition No.5192 (SS) of 2000 assailing the order of his termination from service of the Mandi Parishad dated 31.3.1999 and the said writ petition was disposed of vide order dated 12.9.2000 in terms of the judgment dated 11.8.2000 passed in Writ Petition No. 1346 (SS) of 1999 Mukesh Kumar and others v. Rajya Krishi Utpadan Mandi Parishad and others. In pursuance of the aforesaid

judgment, the petitioner who was reinstated as diploma holder Junior Engineer under the contingency head was reinstated in service. Subsequently, the judgment dated 11.8.2000 was assailed by the Mandi Parishad before Hon'ble Supreme Court and Civil Appeals were finally decided vide judgment dated 16.12.2005 and in pursuance of the said judgment, the petitioner was again disengaged from service vide order dated 1.3.2006/16.12.2005. It is subsequent disengagement from service by means of the aforesaid order, which has been challenged in the aforementioned writ petition and a prayer for regularization of services has also been sought.

24. The petitioner has assailed the order of his termination from service on the same grounds on which petitioners of writ petition No.1804 (SS) of 1999 have assailed their termination. It has been submitted that his engagement was well within the contingency limit but the authorities of the Mandi Parishad arbitrarily and mechanically terminated his services by wrongly applying the Government Order dated 12.2.1999 and no exercise was conducted to scrutinize the case of the petitioner to ascertain as to whether his engagement was in excess of 2% contingency limit.

25. In Writ Petition No. 3156 (SS) of 2007, Sri Rajan Roy submitted that the petitioner was appointed under the contingency head as Diploma Holder Junior Engineer on 5.11.1996 in accordance with the prevailing procedure. The petitioner had earlier field Writ Petition No.523 (SS) of 2000 assailing the order of his termination from service dated 31.3.1999 and the said writ petition was disposed of vide order dated 18.10.2000 in terms of the judgment dated 11.8.2000 passed in Writ Petition No. 1346 (SS) of 1999 Mukesh Kumar and others v. Rajya Krishi Utpadan Mandi Parishad and others. In pursuance of the aforesaid judgment, the petitioner was reinstated in service. Subsequently, the judgment dated 11.8.2000 was challenged by the Mandi Parishad before Hon'ble Supreme Court and the Civil Appeals were finally decided vide judgment dated 16.12.2005 and in pursuance of the said judgment, the petitioner was again disengaged from service vide order dated 1.3.2006/16.12.2005. It is subsequent disengagement from service by means of the aforesaid order which has been challenged in the aforementioned writ petition and a prayer for regularization of services has also

been sought. The petitioner has assailed the order of his termination from service on the same grounds on which the petitioners of writ petition No.180 (SS) of 1999 have assailed their termination.

26. Sri N. C. Mehrotra appearing for the respondent-Mandi Parishad stated that against the decisions taken in the year 1999, a large number of writ petitions were filed wherein they took a plea that their disengagement has been done on the basis of the directions of the State Government contained in G.O. dated 12.2.1999 but their claim was refuted by the respondents. Writ Petition No. 1346 (SS) of 1999; Mukesh Kumar vs. U.P.Rajya Krishi Utpadan Mandi Parishad and others was decided by a learned Single Judge [Hon'ble Bhanwar Singh, J. as he then was]on 11.8.2000. Another bunch of writ petitions arising out of same cause of action was decided on 5.9.20000 of which leading writ petition was writ petition no. 537(SB) of 1999: Rajnessh Varshney vs. State of U.P. and others. However, the writ petition preferred by one Anusham Mishra registered as Anushman Mishra vs. State of U.P. and others [Writ Petition No. 1093 (SB) of 1994] was decided on 13.11.2000 and the writ petition was dismissed on the ground that the services of Anshuman Mishra, who was working as Assistant Engineer for a fixed salary of Rs. 2100/-, was fixed term and temporary appointment which was de hors the Regulations. Against the said judgment and order dated 13.11.2000, a Special Leave Petition was preferred by Anushman Mishra, which was registered as Special Appeal No. 15797 of 2001 but the same too, was dismissed on 16.12.2005.

27. Against the judgment and order dated 5.9.2000, referred to above, the State Government approached the Apex Court. The Apex Court considered the matter of regularization and scrutinized the aforesaid judgment in State of U.P. vs. Neeraj Awasthi and others (2006)1 SCC 667. Under Regulation 29, it is provided that the matter not specially covered by the Rules or by special provision, persons appointed to the Service of the Board shall be governed by the Rules, Regulations and Orders applicable generally to the State Government employees. The Apex Court while rejecting the pleas of the respondents, held that the benefit of provisions of Regulation 29 would be applicable to the regular employees. Here also, the petitioners are neither regular employees nor holding any substantive

post and were appointed dehors the Rules. Therefore, they are not entitled for regularization under any rules and the action of the respondents cannot be said to be arbitrary or unjustified. In oder to substantiate his arguments reliance has been placed on Paragraphs 71, 73, 74 and 79 of Neeraj Awasthi's case [supra].

28. Clarifying the position, he further submitted that in Neeraj Awasthi's case the Apex Court also examined the matter with regard to regularization of such persons in the past and held the action to be beyond jurisdiction of the Board and, therefore, regularization made in past was not proper. Under Service Regulation, definition of "employee" has been given under Regulation 2 (3) which means every person appointed on whole time basis in classes 'A', 'B', 'C' and 'D' mentioned in Regulation 5, whether on contract basis, on deputation or otherwise but does not include the persons employed on daily wages, work charged and on part time basis. In paragraph 33 and 36 the Apex Court clearly held that the work-charge employees do not come within the definition of regular employees.

29. As regard the status of muster roll and work-charged employees, Sri Mehrotra submitted that paragraphs 429, 420 and 667, volume No. 6 of the Financial Hand Book provides that such persons engaged would be given wages from the work charge. So far as rider of 2% limit is concerned, it was put so that authority may not exploit the position of 2% limit and it also does not mean that it is incumbent upon the authorities to appoint any number of persons on any event because the work is being done through contract basis as the Construction Division is having own strength of regular employees, whose salary is charged to the Establishment Head whereas persons engaged on daily wages, their wages are charged from the project head.

30. Elaborating his arguments, Sri Mehrotra, Counsel for the respondents submitted that in all cases, there was a written order after complying the provisions of **Section 6N of the U.P. Industrial Disputes Act**, therefore, there was no violation of principle of natural justice. The action of the Board was held to be valid as in Neeraj Awasthi's case, the Apex Court observed that no appointment can be made in violation of the Rules and in the instant case all appointments were made without any regular selection or following the provisions of the Service Regulation,

1984. He further submitted that in the bunch of writ petitions, there are certain petitioners, who have not filed I.A. petition before the Hon'ble Supreme Court and have claimed regularization. There are other petitioners, who have filed more than one writ petition for the same cause of action and as such they are not entitled for any relief. There are certain other petitioners, who are fully covered by the G.O. dated 12.2.1999, therefore, they are also not entitled for any benefit. Moreover, the prayer of certain petitioners to give benefit as given to C.M. Pandey has already been rejected, therefore, the relief so claimed cannot be denied.

31. Employees of the Mandi Parishad are governed by U.P. Agricultural Produce Markets Boards (Officers and Staff Establishment) Regulation, 1984 [in short referred to as "Service Regulations"] and service conditions of the employees of the Mandi Parishad are governed under the U.P. Agricultural Produce Marketing Committee (Centralized Service Regulation) [in short referred to as "Centralised Service Regulations"]. Chapter II of the Service Regulations deals with the strength of officers and staff. Regulation 4(1) says that the strength of the officers and staff and of each category of posts therein shall be such as may be determined by the Board from time to time.

32. Chapter-III of the Regulations deals with the General Conditions of Recruitment. Regulation-5 provides that the posts under the Board shall for purposes of appointment, control, and discipline etc. be classified in classes 'A', 'B', 'C', and according to the pay scales as per classifications of posts under the State Government in force from time to time. For all the posts falling in Class-B, the Director is the appointing authority as provided in Regulation-9 of the Service Regulations. Thus it is clear that the appointments for different classes of employees are to be made by the Board and the Officers, as the case may be, in terms of the provisions of the Regulation. Both the Service Regulations and the Establishment Regularizations, as indicated above, are applicable respectively to the employees of the Board as also the Market Committees. The said Regulations provide detailed procedure for appointments and the terms and conditions thereof. Therefore, no appointment can be made in violation of the provisions of the Statutory Rules. It is not in dispute that the persons engaged on regular basis are paid salary from the Establishment Heads while persons engaged in the

Construction Divisions are being paid wages from the contingency fund and the Construction Division is under the Control of the Deputy Director (Construction). In past, large number of persons were engaged under local arrangement without any selection or even without any vacancy and when this fact was noticed by the State Government, the State Government issued a Government Order dated 12.2.1999 by which the persons appointed after 1.4.1996 were directed to be disengaged. In Construction Division of the Mandi Parishad, the persons were engaged as per need and when there was no requirement, the persons were disengaged. In order to streamline the system, a policy decision was taken and it was resolved that the disengagement shall be on the principle of 'first come last go'. On account of disengagement, large number of persons approached this Court by filing writ petitions praying inter-alia for quashing the termination orders of their service and the G.O. dated 12.2.1999 issued by the State Government. It was also claimed that they shall be allowed to work and discharge their duties on the posts they were working including regularization of their service.

33. Against the judgment and order dated 11.8.2000 passed by the learned Single and the judgment and order dated 5.9.2000 passed by the Division Bench of the High Court, Mandi Parishad and the State Government both filed separate Special Leave Petitions, which were allowed and the judgment dated 11.8.2000 and 5.9.2000 were quashed in State of U.P. vs. Neeraj Awasthi 2006(1) SCC 667. Furthermore against the judgment and order dated 13.11.2000 passed in Writ Petition No. 1093 (SB) of 1994 was assailed but the SLP against the same was dismissed on 16.12.2005.

34. It may be noted that after the judgment of the Apex Court in State of U.P. vs. Neeraj Awasthi, review petition was also preferred but the same was also dismissed. This was not the end of the litigation and thereafter I.A. Petitions were filed and it was alleged therein by some of the petitioners that their cases were not considered by the High Court as they are not covered by the G.O. dated 12.2.1999. Therefore, the Apex Court remanded the matter of these persons.

35. In most of the writ petitions, it has been pleaded by the petitioners that in the year 1996, Mandi Parishad has resolved that those persons, who worked upto

1000 days, they should be regularized and such decision was taken on 30.9.1996. since there is a provision under **Section 26-X of the Act** by which it is provided that "Board may with previous approval of State Government make regulations not in consonance with this Act and Rules made thereunder for the administration of affairs of the Board. In this regard, it is relevant to point out that the Board has already framed Service Regulations, 1984 for the employees of Mandi Parishad and for employees of Mandi Samiti, there are Centralized Service Regulations, 1984 and since Regulations were already in existence, there was no need or necessity to have any other regulation but since the Board has taken a decision, the matter was sent to the State Government for approval but the State Government rejected the proposal dated 30.9.1996. The aforesaid matter of alleged Regulation, 1996 as well as rejection thereof was duly considered by the Hon'ble Supreme Court in State of U.P. and others vs. Neeraj Awasthi in paragraphs 50 and 56 and it was held that such decision was proper, therefore, once the subject matter has already been considered and concluded by the Apex Court in the aforesaid decision, it is not open for the petitioner to agitate the same question.

36. It is not in dispute that the daily wage & muster roll employees, whose services were terminated in view of the G.O. dated 12.2.1999, decision of the Mandi Parishad has been upheld by the Apex Court although they were drawing salary from the regular establishment. Petitioners cannot be said to be on a better footing than those employees as they were drawing wages from the contingency fund. In some of the writ petitions, it has been argued that in the year 1996, vide 76th Meeting, the Board took a decision to the effect that those work-charge, muster roll employees etc. may be regularized under the Head known as Inter Departmental Regular Rules, 1996, therefore, the petitioners are entitled for their claim in view of the said Regulation. In this regard, it may be noted that in view of **Section 26-X of Krishi Utpadan Mandi Adhiniyam, 1964,** Board may frame Rules with the previous approval of the State Government. After the Board decision, the matter was referred to the State Government under the provisions of **Section 26-X of the Act** but the State Government rejected the proposal on 17.3.1999. This aspect of the matter was also considered by the Apex Court in Neeraj Awasthi's case and the decision dated 17.3.1999 of the State Government was upheld in paragraph

50 and 56 of the judgment. Therefore, it is not open for the petitioners to re-agitate the matter, which is not in existence and that too when their very appointment itself was de hors the Rules. In the above referred case, the Apex Court has also observed that the Board has no jurisdiction to frame any Scheme for Regularization in the face of Statutory Regulation operating in the field. Therefore, the aforesaid facts, assertion of the petitioners that in view of Regularization Rules of 1998 for Group 'C' and Regularization Rules 2001 for Group 'D' employees, they are entitled for Regularization is legally not sustainable.

37. At this juncture, it would be useful to reproduce the relevant paragraphs of State of U.P. vs. Neeraj Awasthi 2006(1) SCC 667

> **"51. The direction of the High Court to frame scheme for regularization of the employees as also the resolution of the Board to regularize the services of the employees who had completed one thousand days of service must be considered having regard to the aforementioned legal position in mind.**
>
> **52. When questioned, Mr. Chaudhari and Mr. Sanghi submitted that regularization would mean permanence. Regularization of the services of an employee would, therefore, mean that the concerned persons who had no status within the purview of the definition of 'employee' would become employee. Thus, a change in the status would be effected.**
>
> **53. An attempt to induct an employee without following the procedure would be a back-door appointment. Such back-door appointments have been deprecated by this Court times without number. [See for example Delhi Development Horticulture Employees' Union v. Delhi Admn. (1992) 4 SCC 99, para 23]**
>
> **55. A3-Judge Bench of this Court upon taking into consideration a large number of decision in A. Umarani v. Registrar, Cooperative Societies and Others [(2004) 7 SCC 112] held that illegal**

**appointments cannot be regularized. It was further held:-**

**"No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."**

**56.The power to frame regulations is expressly conferred on the Board in terms of Section 26 of the Act. Such regulations are to be made with the previous approval of the State Government. Indisputably, the State Government by its letter dated 17.3.1999 refused to accord permission in relation thereto.**

**57.If no appointment could be made by the State in exercise of its power under Article 162 of the Constitution of India as the same would be in contravention of the statutory rules, there cannot be any doubt whatsoever that the Board or for that matter the Market Committees cannot make an appointment in violation of the Act and the Regulations framed thereunder.**

**Apart from the above observations, the Hon'ble Supreme Court while dealing with the rival contentions of the parties and scrutinizing the matters, held in paragraphs 75, 76 and 77 as under:-**

**"75. The fact that all appointments have been made without following the procedure or services of some persons appointed have been regularized in past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetrate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution of India will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now**

**well-settled. [See State of A.P. v. S.B.P.V. Chalapathi Rao and Others,(1995) 1 SCC 724, para 8, Jalandhar Improvement Trust v. Sampuran Singh (1999) 3 SCC 494, para 13 and State of Bihar and Others v. Kameshwar Prasad Singh and Another (2000) 9 SCC 94, para 30].**

**76.In the instant case, furthermore, no post was sanctioned. It is now well-settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill-up the same in terms of the existing rules. They, having regard to the provisions of the regulations, may not fill up all the posts. It may be that from the very inception the provisions of the Act and the Regulations framed thereunder had been given a complete go-by. It, furthermore, may be that the Board had adopted resolution for purported regularization of the services of its employees and employees of Market Committees appointed prior to 1.10.1988. We have, however, noticed herein before that such a resolution on the part of the Board was beyond its domain. It is also true, as has been contended by Mr. Chaudhary and Mr. Sanghi, that the power to create posts was with the Board but the Board did not exercise its power nor the competent authorities of the Market Committees proceeded to appoint employees on the sweet will of the concerned authorities without in any way bothering for the provisions of the Act and the Rules framed thereunder. It is interesting to note that the Market Committees claimed themselves to be local authorities for the purpose of obtaining exemption from payment of income tax. The officers of the local authorities had a bounden duty not only to act within the four-corners of the statute but having regard to the constitutional scheme in mind. They failed and/ or neglected to do so. As appointments had been made de hors the rules and without following the procedures known in law and in flagrant violation of constitutional scheme as laid down in Articles 14 and 16 of the Constitution of India, the appointments although might have**

**been made in exigencies of services, they must be held to be wholly illegal and without jurisdiction. An attempt has been made by the Respondents to show that the income of the Market Committees has increased from `. 1.92 crore to `. 210.88 crores and the quantum of construction work has also increased from `65.8 crores to `128.4 crores. It has also been suggested that in November, 2005, the income has increased in the year 2004-05 to ` 400 crores and the annual budget of the Market Committees which has been sanctioned is approximately ` 350 crores. The availability of funds is not and cannot be a valid ground to make the appointments of persons without proper sanction and creation of posts and cannot be taken to be an excuse to perpetuate illegalities."**

38. In some of the writ petitions, it has been contended that there is violation of principles of natural justice while terminating their services. In this regard, it may be pointed out that as a matter of fact such petitioners were never terminated but they were retrenched as per provisions of U.P. Industrial Disputes Act and it was clearly provided in their retrenchment Order that in case any vacancy arises in future, their claim would be considered. It may be noted that principle of natural justice would be attracted only when services of persons are terminated by way of punitive measure or thereby a stigma is attached. Therefore, assertion of the petitioners is wholly misconceived and is not tenable in the eyes of law. It may also be added that in paragraph 47 of the report in Neeraj Awasthi's case the Apex Court observed that if a retrenchment is effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise.

39. Petitioners in writ petition nos.4094(SS) of 1999, 6218(SS) of 1999, 5128(SS) of 2000, 5623(SS) of 2000, 600(SS) of 2001, 2651(SS) of 2001, 6981(SS) of 2001, 606(SS) of 2001, 4630(SS) of 1999, 5998(SS) of 2000, 5981(SS) of 2001, 8414(SS) of 2007, 3154(SS) of 2007, 3156(SS) of 2007, 2721 of 2001 and 2719(SS) of 2001, as pointed out by the Counsel for the Mandi Parishad, never approached the Apex Court by filing IA petitions. Therefore, their matter was never remanded for reconsideration by the High Court. However, their cases were also examined but in view of the discussions made hereinabove, they are not entitled

for any relief. Furthermore, their claim for regularization/re-engagement has already been rejected.

40. Petitioners in Writ Petitions Nos. 2619(SS) of 1999, 3329(SS) of 1999, 3328(SS) of 1999, 3700(SS) of 1999, and 5216(SS) of 2000, admittedly, were never appointed in Construction Division nor were engaged on the regular Establishment. As a matter of fact, they were engaged simply at the Mandi Barriers for collecting gate pass. It may be pointed out that in order to check evasion of market fee, a Circular was issued on 6.10.1995 to establish check post/barriers. Later on, when some difficulties were felt, a decision dated 14.4.1998 was taken introducing single levy of market fee. Consequently, in view of the decision dated 20.4.1999, all the check posts/barriers were abolished in the State and the persons so appointed were disengaged. Creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria for selection etc. are matters which fall within the exclusive domain of the employer. Therefore, it cannot be said that their disengagement is bad in law or any statutory right has been infringed on account of action of the Board/State Government.

41. It may also be pointed out that petitioners of writ petition no. 7119 (SS) of 2001 and 5128 (SS) of 2000 were disengaged orally and did not work with the respondents after 1996. Similarly, large number of petitioners in writ petitions no. 1669(SS) of 1999, 2146(SS) of 1999 and 5903(SS) of 1999 were disengaged orally much before the issuance of G.O. dated 12.2.1999 i.e. sometime in the years 1996 and 1997. Similarly, petitioners of writ petition no. 5623(SS) of 2000, 5128(SS) of 2000, 5128(SS) of 2000, 319(SS) of 2001, 5553(SS) of 2000, petitioner no. 8 in writ petition no. 5045(SS) of 2000, petitioners nos. 3 to 12 of writ petition no. 6695(SS) of 2000, petitioner no.2 of Writ Petition no. 5296(SS) of 2000 preferred writ petitions after the judgment dated 11.8.2000 passed by the learned Single Judge, whereby the G.O. dated 12.2.1999 was quashed. As a matter of fact, these writ petitioners were disengaged some time in the year 1996, 1997 and 1998. Therefore, no fresh cause of action has accrued to them and it cannot be said that they are actually aggrieved by the G.O. dated 12.2.1999.

42. At the cost of repetition, it is again pointed out that the cause of action to the petitioners had accrued sometime in February-March, 1999 when written orders of retrenchment were passed by the authorities. But there are large number of persons/petitioners, who have joined the present bunch of cases without filing any termination order/retrenchment order. These persons/petitioners were actually disengaged in 1996-97, 1997-98 i.e. much before the issuance of the G.O. dated 12.2.1999. Therefore, such petitioners are not entitled for any relief as they have not come with clean hands, suppressed material facts apart from the fact that they have approached the Court after inordinate delay on misconceived ground.

43. Petitioners of writ petition no. 3154 of 2007 and 3156 of 2007 have prayed that their cases are fully covered by the decision of the Apex Court rendered in U.P.SEB vs. Puran Chandra Pandey; 2007(11) SCC 92.The aforesaid decision was considered again by the Apex Court in Official Liquidator vs. Dayanand; 2008(10) SCC 1 and the relevant observations made in paragraph 77 reads as under:-

> **" We have carefully analyzed the judgment of the two Judge Bench (in Pooran Chandra Pandey case) and are of the considered view that the above reproduced observations were not called for. The only issue which fell for consideration by the two-Judge Bench was whether the daily wage employees of the society, the establishment of which was taken over by the Electricity Board alongwith the employees, were entitled to be regularized in terms of the policy decision taken by the Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. The question whether the Electricity Board could frame such a policy was neither raised nor considered by the High Court and this Court. The High Court simply adverted to the facts of the case and held that once the daily wage employees of the society became employees of the Electricity Board, they could not be discriminated in the matter of implementation of the policy of regularization. Therefore, the two-Judges Bench had no occasion to**

**make any adverse comment on the binding character of the Constitution Bench judgment in Secretary, State of Karnataka vs. Uma Devi (supra)."**

44. In view of the aforesaid observations of the Apex Court, the petitioners are not entitled for any benefit as claimed by them.

45. As regard writ petition no. 600 (SS) 2001, this Court directed by an order dated 2.2.2001 to consider the case of the petitioner in light of the judgment dated 11.8.2000. In compliance of this order, the respondents considered the claim of the petitioners but the same was rejected. The order of rejection was not challenged thereafter by the petitioners. Under these circumstances, their case is entirely different and cannot be re-examined again.

46. It is also worthwhile to mention that petitioner nos. 1, 2 and 3 in writ petition no. 2651 (SS) of 2001 have earlier preferred writ petition no. 5736 (SS) of 2000, which was decided on 18.10.2000 but the said judgment was quashed by the Apex Court in Neeraj Awasthi's case. Similarly, petitioners no. 4,5,6 and 7 earlier filed writ petition no. 5045 (SS) of 2000 and the present petitioners no. 8, 9 and 10 filed writ petition no. 6695 (SS) of 2000, which were decided earlier. Now, they have filed the present writ petition, which is second writ petition on the same subject and as per law, the same is not maintainable. Even otherwise, they are not entitled for any relief in view of the detailed discussions made hereinabove.

47. In some of the writ petitions, referred to above, it has been argued that even those persons have been retrenched where the funds were below 2% contingency fund. In this regard, it may be stated that the work is being carried by the respondents on contractual basis after executing a bond in future and the persons are engaged to supervise the work and 2% contingency fund is a maximum limit. It is not necessary that in every case and everywhere such large number of persons should be employed whether there is need or no need. Therefore, the decision was taken as per the requirement of the case and there is no illegality in doing so and it cannot be said that the rules were tweaked.

48. In some of the writ petitions, it has been argued that the opposite parties have regularized the services of eight Degree Holder Engineers/contingency Head employees on the post of Junior Engineer in pursuance of a decision taken by the state Government. The said persons are still continuing as regular employees and their services have not been terminated nor the order of their regularization has been withdrawn. The opposite parties cannot adopt a policy of pick and choose in this regard and discriminate the other persons. In my considered opinion, if it has been done erroneously, it cannot become the foundation for perpetuating further illegality. In paragraph 75 of the judgment in Neeraj Awasthi's case [supra] the Apex Court has negated the same argument by observing that services of some persons appointed have been regularised in the past, it cannot be said to be a normal mode which must receive the seal of the court. The State and Board were bound to take steps in accordance with law. Even in this behalf, Article 14 of the Constitution will have no application. Article 14 has a positive concept and it cannot be enforced by a citizen or court in a negative manner. In other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed, the Court cannot direct the authorities to repeat the same again.

49. If at this distant date an order is passed for re-appointment or re-engagement of the petitioners, the same would be in violation of the settled law of the land. It may be noted that if an appointment is a contractual appointment, the appointment comes to an end at the end of contract and if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. My above view is fortified by the decision of the Apex Court rendered in Union of India vs. kartick Chandra Mondal; 2010(2) SCC 422, wherein the Court observed as under:-

**"Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court. However, we intend to refer to a latest decision of this Court on this point in the case of State of Bihar v. Upendra Narayan Singh & Others [(2009) 5 SCC 69], the relevant portion of which is extracted herein below: -**

**"67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order".[A reference in this regard may also be made to the earlier decisions of this Court. See also: 1) Faridabad CT. Scan Centre v. D.G. Health Services and Others [(1997) 7 SCC 752]; 2) South Eastern Coalfields Ltd. v. State of M.P. and Others [(2003) 8 SCC 648] and 3) Maharaj Krishan Bhatt and Another v. State of J&K and Others [(2008) 9 SCC 24]]"**

50. At this juncture, it would be useful to mention that the petitioners also cannot be granted any benefit on the ground that they have worked for considerable long time in view of the proposition of law laid down in paragraph 45 of a recent decision by the Apex Court rendered in State of Karnataka v. Ganapathi Chaya Nayak (2010) 3 SCC 115:-

**"45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain--not at arm's length--since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. .....It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."**

51. Thus it is clear and well-settled principle of law that even if a wrong has been committed in an earlier case, the same cannot be allowed to perpetuate anyfurther moreso, when the Counsel for the respondent has brought to the notice of the Court that show cause notices have been issued to such employees and their matter is again being examined by the authorities as per law. Thus in view of the aforesaid facts and circumstances coupled with the decisions of the Apex Court in Neeraj Awasthi's case, Umadevi' case, Union of India vs. kartick Chandra Mondal and Official Liquidator' case [supra], the claim of the petitioners for re-engagement and regularization cannot be sustained.

52. In view of the aforesaid discussions and conclusions arrived at, I am of the considered opinion that the writ petitions are devoid of merits and liable to be dismissed, which are accordingly dismissed. There will be no order as to costs.

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