

A THE EXECUTIVE ENGINEER
(STATE OF KARNATAKA)
v.
K. SOMASETTY AND ORS.

B MAY 2, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

Industrial Disputes Act, 1947 :

C *Ss.2(j), 10—"Industry"—Daily wage employee engaged in a project taken by State Government—On closure of project employee discharged—Employee approaching Labour Court for continuity of his employment—Claim allowed—High Court upheld the order of Labour Court—Held, the function of public welfare of the State is a sovereign function—In the circumstances, State is not an 'industry' under the Act—Even otherwise, since the project has been closed, the employee has no right to the post as he had been appointed on daily wages—Order of reinstatement enforced under the threat of contempt is subject to the final order in this appeal—Appeal of the State Government allowed.*

E *Union of India v. Jai Narayan Singh, [1995] Supp. 4 SCC 672 and State of H.P. v. Suresh Kumar Verma, JT (1996) 2 SC 455, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3637 of 1997.

F From the Judgment and Order dated 18.4.96 of the Karnataka High Court in W.A. No. 878 of 1996.

P. Mahale for the Appellant.

T. Kanaka Durga for the Respondents.

G The following Order of the Court was delivered :

Leave granted.

H The respondent was appointed on daily wages in a project taken up by the appellant on July 25, 1986. The respondent was discharged from the work on its closure on January 15, 1989. Thereafter, he approached the

Labour Court under Section 10 of the Industrial Disputes Act. On a reference, the Labour Court held that the respondent is entitled to continuity of service with back wages since it amounts to dismissal. The order was confirmed by the learned single Judge of the High Court subject to payment of 50% of the back wages. Writ Appeal No. 878/96 was dismissed by the Division Bench. Thus, this appeal by special leave.

It is now well settled legal position that the Irrigation Department and Tele-communication Department are not an 'Industry' within the meaning of definition under the Industrial Disputes Act as held in *Union of India v. Jai Narayan Singh*, [1995] Supp. 4 SCC 672 and in *State of H.P. v. Suresh Kumar Verma*, JT (1996) 2 SC 455. The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive Principles, that the Government should bring about welfare State by all executive and legislative actions. Under these circumstances, the State is not an 'industry' under the Industrial Disputes Act. Even otherwise, since the Project has been closed, the respondent has no right to the post since he had been appointed on daily wages. It is brought to our notice that respondent has been reinstated. The order of the reinstatement has been placed before us which indicates that at the threat of contempt of Court, the order has been enforced. It is stated therein that it is subject to the final order of this Court in this appeal.

Under these circumstances, the appeal is accordingly allowed. The order of the Labour Court stands set aside. The order and judgment too stand set aside.

R.P.

Appeal allowed.