Managing Director, Tripura Small Industries Corporation Ltd. Vs Bishnu Kumar Bhowmik and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: July 23, 2009

Acts Referred: Constitution of India, 1950 â€" Article 14, 226

Citation: (2010) 2 GLR 776 : (2009) 5 GLT 817

Hon'ble Judges: T.NK. Singh, J; Mutum B.K. Singh, J

Bench: Division Bench

Judgement

T.NK. Singh, J.
These 24 (twenty-four) writ appeals filed by the Managing Director, Tripura Small Scale Industries Ltd. and the

Government of Tripura, assailing the common judgment and order dated 8.12.2005 disposing 12 (twelve) writ petitions, on the similar grounds

basing on the similar facts were heard jointly. For the sake of convenience, as requested by both the parties, these 24 (twenty-four) writ appeals

are being disposed of by this Common judgment and order.

2. Heard Mr. S. Deb, learned senior advocate, assisted by Mr. S. Chakraborty, learned Counsel appearing for the appellant-Managing Director,

Tripura Small Scale Industries Corporation Ltd. ("Corporation") and Mr. T.D. Majumder, learned Addl. Government Advocate for the State of

Tripura. Also heard Mr. A.K. Bhowmik, learned senior advocate, assisted by Mr. S. Ghosh, learned Counsel appearing for the respondents/writ

petitioners.

3. Since, the facts leading to the filing of the writ petitions challenging the order of the Managing Director, Corporation dated 19.6.1997 and the

grounds for assailing the impugned common judgment and order dated 8.12.2005 of the learned Single Judge are similar, for avoiding repetition of

facts and grounds for each of the writ appeal, WA No. 21 of 2006 is taken up as a leading case for referring the facts of the case of the writ

petitioners and grounds for assailing the impugned common judgment and order dated 8.12.2005 passed by the learned Single Judge for the

common judgment and order proposing to be passed by us.

4. The respondents/writ petitioners were appointed as Lower Division Clerk (LDC), a Group-"C" post, on 1.4.1992, in the pay-scale of Rs.

97,02,400 per month by the Managing Director, Corporation, by following the decision of the Board of directors of the Corporation as alleged by

the writ petitioners. The Contributory Provident Fund (CPF) was also opened in the name of the petitioners, for which the petitioners were to

contribute Rs. 13.4 per month and, accordingly, the petitioners contributed an amount of Rs. 13.4 per month for the CPF. On 28.7.1992, the

Managing Director, Corporation, issued the Memorandum that the clerks who involved in typing work shall not be entitled to further increments, if

they failed to prove their proficiency test in typing. It is stated that as the petitioners were not successful in the typing test, their yearly increments

were held up. Till June, 1997 the writ petitioner were drawing their monthly salaries in the pay-scale meant for the category of Group-"C"

employee (LDC/Supervisor), etc., of Rs. 97,02,400 per month. As on the date of filing the writ petitions, i.e., July, 2000, the writ petitioners had

been put in service under the corporation for 8 years continuously in the post of LDC, a Group-"C" category employee.

5. To the litter surprise of the writ petitioners, they came to know that by the impugned order dated 19.6.1997, pursuant to the decision of the

Board of directors of the Corporation in their 145th meeting, 103 numbers of employees in different categories including the petitioners were

treated as fixed pay employees. The writ petitioners also contended that in the case of other 89 employees who are similarly situated with the writ

petitioners, were not reduced to fixed pay employees and were allowed to enjoy the pay-scale of the regular employee. In other words, the

condition of service of the said 89 employees for enjoyment of regular pay-scales for the posts held by them had not been disturbed. The

corporation, in violation of the principle of natural justice had changed the condition of service of the writ petitioners by treating them as a fixed pay

employee. The writ petitioners had been treated partiality by reducing their pay and treating them as contractual employee. By using the different

yardstick, the said 89 employees, similarly situated with the writ petitioners had been allowed to continue to enjoy the pay-scale of the regular

employee and also that the Corporation had not meted out treatment similar to that of the 89 employees to the writ petitioners by reducing their

pay-scales (writ petitioners). It is the further case of the writ petitioners that the impugned order dated 19.6.1997 is arbitrary, illegal, unwarranted

and also an order without jurisdiction.

6. The appellants-respondents had filed the counter-affidavit, stating that the engagement of the writ petitioners are irregular and also no

appointment letters were issued in favour of the writ petitioners though they were drawing regular salaries w.e.f. 1.4.1992. When engaging the writ

petitioners in the Corporation, no necessary formalities were followed, even no application was received from the petitioners, no advertisement

was made, no approval was taken from the Government towards their engagement, no sanction post was available in the Corporation for

appointment/engagement of the writ petitioners. The Corporation is dependant on the financial assistance in the form of share capitals provided by

the State Government from time to time. The Corporation without the approval of the Government cannot create any post and also cannot appoint

any person against non-existence post. The appellant-Corporation further contended in the affidavit-in-opposition that when the fact of irregular

engagement of the writ petitioners was noticed by the Corporation, on 22.6.1993 the matter was discussed in the meeting of the 133rd''Board of

Directors of the Corporation and found that even no advertisement was issued inviting applications for engagement, no interview was taken, no

appointment letter was issued and no approval was obtained from the Government of Tripura, which is a must for the appointment/engagement of

the employee of the Corporation. In the said 133rd meeting of the Board of Directors of the Corporation, it was also found that the Corporation

suffered from over-staffing and the Board of Directors of the Corporation decided to refer the matter to the Government of Tripura indicating

details of such appointment for a decision. Pending decision from the Government, the Board authorized the Managing Director, Corporation to

maintain status quo in respect of the new staffs and to take follow up action as soon as the Government decision arrives. Ultimately, in the 145th

meeting of the Board of Directors of the Corporation, the Board did not approve the appointment of 103 numbers of employees including the writ

petitioners who had been working without any valid engagement and decided that they will be treated as employees on contract basis. The salary

drawn at present by them will have no further increment due to the reason that there is no scope to regularize them as the present financial position

of the Corporation does not permit to undertake further financial liabilities towards pay and allowances. Pursuant to the decisions in the 145th

meeting of the Board of directors of the Corporation, the Managing Director, Corporation issued the impugned order dated 19.6.1997. The

appellant-Corporation further stated that the principle of natural justice is not attracted in issuing the impugned order inasmuch as the

engagement/appointment of the writ petitioners were made de hors the Rules and their appointments are illegal and the prescribed procedures for

appointment/engagement of the employees of the Corporation were not followed in case of engaging/appointing the writ petitioners as Group-"C"

employee in the service of the Corporation.

7. The learned Single Judge by passing the common judgment and order dated 8.12.2005, had allowed 12 (twelve) writ petitions filed by the writ

petitioners only on three inter alia reasons that- (a) there was violation of natural justice in issuing the impugned order dated 19.6.1997; (b) by

using the different parameters and yardstick for the same set of employees, the said 89 employees who were said to be similarly situated with the

writ petitioners were allowed to enjoy the pay of regular employee by the Corporation; (c) the writ petitioners are to be treated similarly with those

89 employees.

By the impugned common judgment and order dated 8.12.2005, the learned Single Judge had not only quashed the impugned order dated

19.6.1997 but also directed the Corporation to allow the writ petitioners to receive their monthly salaries in the time scale of pay attached to their

respective posts from July, 1997 with all consequential reliefs. Being aggrieved by the impugned common judgment and order dated 8.5.2005, the

appellant-Corporation as well as the State Government filed the present 24 (twenty-four) writ appeals on the similar grounds and reasons.

8. Mr. S. Deb, learned senior Counsel appearing for the appellant-Corporation contended mat as the engagement of the writ petitioners are

admittedly illegal and the prescribed procedure for engagement/appointment of the employees of the corporation were also not followed and also

admitted by the parties that the engagement of the writ petitioners as Group-"C" employee of the Corporation were made de hors the Rules, the

principle of natural justice is an empty formality in the given case. In support of this contention, Mr. S. Deb, learned senior Advocate for the

appellant-Corporation had relied heavily on the decision of the Apex Court in-

(1) S.L. Kapoor Vs. Jagmohan and Others, ,

(2) Dr. J. Shashidhara Prasad Vs. Governor of Karnataka and Another, ,

(3) M.C. Mehta Vs. Union of India (UOI) and Others, .

(4) Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, ,

(5) Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ,

(6) Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, ,

(7) State of Manipur and Others Vs. Y. Token Singh and Others, .

9. The Apex Court in S.L. Kapoor"s case (supra), held that in a case where on the admitted or indisputable facts only one conclusion is possible,

the court may not issue its writ to compel the observance of natural justica, not because it is not necessary to observe natural justice but because

courts do not issue futile writs. In the present case, it is not disputed that the engagement of the writ petitioners are illegal and were made de hors

the Rule and they do not have any sort of right to the post and also to a enjoy the regular pay-scale. Such being the undisputed facts, giving an

opportunity of being heard to the writ petitioners or observance of natural justice will have no consequences. Para 17, 21 and 24 of SCC in S.L.

Kapoor (supra) are quoted hereunder:

Para 17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice

would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one

conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural

justice, not because it approves the non-observance of natural justice but because courts do not issues futile writs. But it will be a pernicious

principle to apply in other situation where conclusions are controversial, however, slightly, and penalties are discretionary.

Para 21. In Margarita Fuentes v. Tobert L. Shevin, it was said (at P.574):

But even assuming that the appellants had fallen behind in their installment payments, and that they had no other valid defenses; that is immaterial

here. The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. To one who protests against the

taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same

result because he had no adequate defense upon the merits.

Para 24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be

done. Jackson''s Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasized in many cases.

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the

observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord

Widgery, CJ''s Judgment in R. v. Home Secretary, ex.p. Hosenball, whore after saying that ""the principles of natural justice are those fundamental

rules, the breach of which will prevent justice from being seen to be done"" he went on to describe the maxim as ""one of the rules generally

accepted in the bundle of the rules making up natural justice"".

It is the recognition of the importance of the requirement that justice is seen to be done that justice the giving of a remedy to a litigant even when it

may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by

an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of

injustice or possible injustice. In Altco Ltd. v. Sutherland, Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator

had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important

that the parties should not only be given justice, but, as reasonable men, know that they and had justice or ""to use the time hallowed phrase"" that

justice should not only be done but be seen to be done. In R. v. Thames Magistrates'' Court, ex.p. Polemis, the applicant obtained an order of

certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional

Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defense to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not

seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: ''Well, even if the case had been

properly conducted, the result would have been the same''. That is mixing up doing justice with seeing that justice is done (per Lord Widgery, CJ

at page 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice

had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of

natural justice is unnecessary. It will comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As

we said earlier were on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the

court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because

courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

10. The ratio laid down in S.L. Kapoor''s case (supra) was followed by the Apex court in Dr. J. Shashidhara Prasad''s case (supra). The fact in

that case was that the appellant Dr. J.S. Prasad was appointed as Vice-Chancellor w.e.f. 4.9.1997 vide order of the chancellor issued on

20.8.1997 but on next date, i.e., 21.8.1997, the appointment order was cancelled on the ground that a criminal case was pending against the

appellant. The appellant filed writ petition assailing the said order of the chancellor dated 21.8.1997 mainly on the ground that the Principles of

Natural Justice was followed while issuing the said order of the Chancellor dated 21.8.1997, inasmuch as, no opportunity was given to the

appellant before issuing the impugned order dated 21.8.1997. But it is an undisputable fact that at the time of issuing the said order dated

20.8.1997 a criminal case was pending against the appellant and such being the situation, giving an opportunity of being heard or observance of the

Principles of Natural Justice will have no consequence. As such issuing a writ for observance of Principles of Natural Justice will only be a futile

one. Para 17 of SCC in Dr. J. Shashidhara Prasad''s case (supra) is quoted hereunder:

Para 17. The next decision referred to is the judgment in S.L. Kapoor v. Jagmohan, Reliance was placed on the following passage in the judgment:

(SCC p. 395, Para 24).

In our view, the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice

had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of

natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As

we said earlier, where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the

court may not issue its writ to compel the observance of natural justice, nor because it is not necessary to observe natural justice but because

courts do not issue futile writs.

The aforesaid passage itself shows that the court will refuse to issue a writ which will be futile even after there had been failure to observe the

principles of natural justice. On the facts of the present case, it is not disputed that the Chancellor has appointed the second respondent as Vice-

Chancellor after cancelling the appointment of the appellant. It is also not disputed that a criminal case was pending against the appellant on the

date on which the order of cancellation of the appellant was made.

11. The Apex court is of the similar view in M.C. Mehta Vs. Union of India (UOI) and Others, that if on the admitted or indisputable factual

position, only one conclusion is possible and permissible, the court need not issue a writ merely because there has been a violation of the principles

of natural, justice, inasmuch as, order enforcing natural justice will only be an empty formality. Paras 19, 20, 21 and 23 of SCC in M.C. Mehia''s

case (supra) are quoted hereunder:

Para 19. Learned senior Counsel for Bharat Petroleum contended that once natural justice was violated, the court was bound to strike down the

orders and there was no discretion to refuse relief and no other prejudice need be proved.

Para 20. It is true that in Ridge v. Baldwin, it has been held that breach of the principles of natural justice is in itself sufficient to grant relief and -

that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this Court in several causes but we

might point out that this Court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J. in S.L. Kapoor v.

Jagmohan. After stating (at SCC p. 395, para 24) that-

principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been

observed.

and that ""non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is

unnecessary"". Chinnappa Reddy, J, also said down an important qualification as follows; (SCC p. 395 p. para 24).

As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only penalty is permissible, the

court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because

courts do not issue futile writs.

Para 21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need

not issue a writ merely because there is violation of the principles of natural justice.

Para 23. We do not propose to express any option on the correctness or otherwise of the ''useless formality'' theory and leave the matter for

decision in an appropriate case, inasmuch as, in the case before us. ""admitted and indisputable"" facts show that grant of a writ will be in vain as

pointed out by Chinnappa Reddy. J.

(emphasis supplied)

12. The Apex court in Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institute''s case (supra) held that the opportunity

to show cause to adversely affected person will not be necessity in a case where the undisputed fact will not permit the affected person to put up

valid defence when opportunity being given by the court. The fact in that case was that the appellant was granted leave to undergo M.Phil but

instead of undergoing M.Phil, the appellant admitted herself for Ph.D course and refused to join her service as Lecturer in Chemistry even after the

leave for undergoing M.Phil had expired. Accordingly, the appellant was terminated from her service by an order of the authority. The appellant

had challenged the order of the authority only on the ground that opportunity was not given to her before issuing the termination orders. The Apex

court held that even, if, opportunity was given to the appellant, she would have no plausible explanation. This being the situation, the said

termination order shall not be interfered with only on the ground of non-observation of principles of natural justice. Para 8 of SCC in

Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institute (supra) is quoted hereunder:

Para 8. The contention of learned Counsel for the respondent is confined that there was no enquiry in terms of Section 6 of the said Act. There is

no submission of any defence on merit. Even before us when we granted learned Counsel an opportunity to give any prima facie or plausible

explanations on record to defend her actions, nothing could be placed before us. Giving of opportunity or an enquiry of course is a check and

balance concept that no one''s right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute

requires. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned.

What enquiry is to be made when one admits violations? When she admitted she did not join M. Phil, course, she did not report back to her duty

which is against her condition of leave and contrary to her affidavit which is the charge, what enquiry was to be made? In a case where the facts

are almost admitted, the case reveals itself and is apparent on the face of the record, and in spite of opportunity no worthwhile explanation is

forthcoming as in the present case, it would not be a fit case to interfere with the termination order.

13. The Apex court also discussed the principles of useless formality or doctrine of useless formality regarding the application of Principles of

Natural Justice in a given case in Aligarh Muslim University''s case (supra) and held that in the cases of admitted or indisputable fact leading only

one conclusion observance of principles of natural justice will only be an useless formality. Paras 21, 25 and 26 of the SCC in Aligarh Muslim

University''s case (supra) are quoted hereunder:

Para 21. As pointed recently in M.C. Mehta v. Union of India there can be certain situations in which an order passed in violation of natural justice

need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned,

interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival

of another order which is in itself illegal as in Gadde Venkateswara Rao v. Government of A.P. It is not necessary to quash the order merely

because of violation of micelles of natural justice.

Para 25. The ""useless formality"" theory, it must be noted, is an exception. Apart from the class of cases, of ""admitted or indisputable facts leading

only to one conclusion"" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views

expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views

expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J and Straughton, LJ, etc., in

various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark, etc. Some of them have said

that orders" passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no

such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go

deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

Para 26. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions stated by

Chinnappa Reddy, J, in S.L. Kapoor v. Jagmohan, namely, that on the admitted or indisputable facts, only one view is possible. In that event no

prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued.

14. The Apex court in Ashok Kumar Sonkar"s case (supra), held that there cannot be any doubt whatsoever that all the audi alteram partem is

one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principles of natural

justice should be followed. These principles cannot be put in any straitjacket formula.

15. The Apex Court in Y. Token Singh"s case (supra), held that fake appointments without following any established procedure, cancellation of

such appointments by the Government, principle or natural justice is not attracted and the State Government cannot be compelled to pay the

salaries from the State exchequer. Para-17 of the SCC in Y. Token Singh"s case (supra) read as follows:

17. If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to

pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent therefore and in complete violation

of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself

had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State

did not, thus, lack bona fides.

16. Mr. T.D. Majumder, learned Addl. Government Advocate appearing for the appellant State strenuously contended that the illegal action of the

Corporation for allowing the said 89 employees to continue to enjoy to regular salaries cannot be treated as a precedent for a direction to the

Corporation to allow the writ petitioners to continue to enjoy the regular salaries. In support of his contention, the learned Addl. Government

Advocate for the appellant State relied on the decision of the Apex Court in-

(1) Chandigarh Administration and another Vs. Jagjit Singh and another, ,

(2) Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions :

17. The Apex Court in Chandigarh Administration''s case (supra) held that the orders and actions of the authorities cannot be equated to the

Judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. As

such the orders and actions of the authority in favour of other employees, if found to be contrary to law or not warranted in the facts and

circumstances of their cases, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority

to repeat the illegality or to pass another unwarranted order. Para-8 of the AIR in Chandigarh Administration''s case (supra) reads as follows:

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is

unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at

a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly

situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person

might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If

the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that

such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass

another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because

the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality

over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the

court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult

to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning

the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such picas

would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of

course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given

to the petitioner if it is found that the petitioner''s case is similar to the other person''s case. But then why examine another person''s case in his

absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and

convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to

enquire into the correctness of the order made or action taken in another person''s case, which other person is not before the court nor is his case.

In our considered opinion, such a course-barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court

cannot ignore the law and the wall-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been

passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law

or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions

of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the

precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial

power, we express no opinion. That can be dealt with when a proper case arises).

The Apex Court in Harpal Kaur Chahal (supra) held that ""...the view of the High Court is obviously illegal and the judgment rendered would not

form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidates though illegally

appointed. Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of the orders.

18. Mr. S. Deb, learned senior advocate appearing for the appellant-Corporation vehemently contended the decision of the learned Single Judge

by the impugned common judgment and order dated 8.12.2005 that the writ petitioners who are daily rated workers/contract employees, are

entitled to regular salaries with a further direction to the appellants to pay regular salaries to the writ petitioners would amount to a direction to

create regular posts for payment of regular salaries to the writ petitioners, inasmuch as, without regular post the writ petitioners who are the

contract employees cannot be allowed to enjoy the regular salaries and also that such direction of the learned Single Judge is a direction without

jurisdiction. Also, the daily rated workers/contract employees cannot be paid salaries of regular employee in the absence of regular post. In order

to strengthen his submission, Mr. S. Deb, learned senior Advocate also relied on the decision of the Apex Court in Indian Drugs and

Pharmaceuticals Ltd. v. Workman, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SLR 388 (SC), wherein the Apex Court held that the court

cannot create a post where none exists and, cannot issue any direction to the authority to pay the daily wages, salaries of regular employees. Para

Nos. 40 and 41 of SLR in Indian Drugs and Pharmaceuticals Ltd."s case (supra) read as follows:

40. Creation and abolition of posts and regularization are a purely executive function vide P.U. Joshi and Others Vs. The Accountant General,

Ahmedabad and Others, . Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents

or continue them in service, or pay them salaries of regular-employees, as these are purely executive functions. This Court cannot arrogate to itself

the powers of the executive or Legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits.

41. The respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment of

regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the court for continuation in service

or payment of regular salary to a casual, ad hoc or daily rate employee. Such direction are executive functions, and it is not appropriate for the

court to encroach into the functions of another organ of the State. The courts must exercise judicial restraint in this connection. The tendency in

some courts tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situation

can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril

for the judiciary.

19. The case cited by Mr. A.K. Bhowmik, learned senior Counsel appearing for the respondents/writ petitioners, viz., (1) Divisional

Superintendent, Eastern Railway v. Sri L.N. Keshri (1975) 5 SCC 01 and (2) Bhagwan Shukla Vs. Union of India and others, , basing on which,

the learned Single Judge passed the impugned common judgment and order dated 8.12.2005, will not help the case of the writ petitioners,

inasmuch as, the fact of those cases are diametrically different from that of the present case.

20. In Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 Apex Court observed-

18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an

authority for what it actually decides, and not what logically follows from it.

In Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, Apex Court observed-

59. ...It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

21. As held in Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, , a decision cannot be relied on without

disclosing the factual situation. In the same judgment, the Apex Court also observed: (SCC pp. 584-85, paras 9-12).

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on

which reliance is placed. Observations of courts are neither to be read as Euclid"s theorems nor as provisions of a statute and that too taken out of

their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be

construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy

discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words

of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (AC at p. 761) 1951 AC 737 Lord

MacDermott observed (All ER p. 14-C-D).

The matter cannot, of course, be settled merely by treating the Ipsissima verba of Willes, J. as though they were part of an Act of Parliament and

applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that

most distinguished judge,....

10. In Home Office v. Dorset Yacht Co. Ltd. (1970) 2 All ER 294 (HL) (All ER p. 297 g-h) Lord Reid said, "Lord Atkin"s speech...is not to be

treated as if it were a statutory definition. It will require qualification in new circumstances." Megarry, J. in Shepherd Homes Ltd. v. Sandham (No.

2) (1971)2 All ER 1267 observed: (All ER P. 127d)

One must not, of course, construe even a reserved judgment of even Russel, LJ as if it were an Act of Parliament,

And, in Herrington v. British Railways Board Lord Morris (1972) 1 All ER 749 [HL(E)] said: (All ER p. 761c)

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be

remembered that judicial utterances are made in the setting of the facts of a particular case.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases

by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may

alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one

case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all

decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you

will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

22. The Apex Court in Indian Council of Agricultural Research and Another v. T.K. Suryanarayan and Others, 1997(6) SCC 766. , held that if

promotion is given by wrongly interpreting the Rules, employer cannot be prevented from applying the Rules rightly and in correcting the mistakes,

it may cause hardship but the court of law cannot ignore the statutory Rules.

23. For the reasons discussed above, we, with all respect to the learned Single Judge, cannot endorse the reasons and grounds in the impugned

common judgment and order dated 8.12.2005 for quashing the impugned order dated 19.6.1997 of the Corporation and also further directing the

Corporation to pay regular salaries to the writ petitioners. Accordingly, having no alternative, we set aside the impugned common judgment and

order dated 8.12.2005.

24. In the result, the writ petitions filed by the writ petitioners are devoid of merit and hereby dismissed. Accordingly, these 24 (twenty four) writ

appeals are allowed. The parties are to bear their own costs. However, the dismissal of the writ appeals do not preclude the appellants viz. The

Tripura Small Industries Corporation Ltd. and the Government of Tripura, if they choose, to consider the grievance of the writ petitioners with

human touch favorably.