

CASE NO.:
Appeal (civil) 5302 of 2004

PETITIONER:
Avas Vikas Sansthan & Anr.

RESPONDENT:
Avas Vikas Sansthan Engineers Assn. & Ors.

DATE OF JUDGMENT: 28/03/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
WITH

C.A. Nos. 5303, 5305-5308, 5309-5311, 5312-5316,
5317-5322, 5323-5327, 5328-5330, 5331-5336,
5337, 5339, 5342-5348, 5349-5351, 5352-5354,
5356, 5357-5359, 5360-5365, 5366-5370, 5371-5376,
5377-5381, 5382-5385, 5386-5392 of 2004

Dr. AR. Lakshmanan, J.

This batch of appeals arise from the common final judgment and order dated 03.05.2002, passed by the High Court of Judicature for Rajasthan at Jaipur in D.B. Civil Special Appeal No. 315/2002 etc. etc. in S.B.C.W.P. No. 1750/99 etc. etc. whereby the High Court partly allowed the appeal of the appellants-herein by holding that the employees (respondents) are entitled to reemployment and the various reliefs claimed by them.

Since all the appeals involve common question of law, they have been heard together with the consent of concerned parties and are being disposed of by this judgment.

Facts in brief:

Avas Vikas Sansthan (in short 'the AVS') was registered as a Society under the Societies Registration Act, 1860 on 17.11.1988. The AVS was brought into existence to achieve certain objectives. The objects of the society were to collect information regarding low cost technology for construction of houses, undertake field studies for development of appropriate low cost building materials, undertake construction works, imparting practical training etc. in the State of Rajasthan.

The AVS was brought into existence as a result of the Scheme formulated by the Housing and Urban Development Corporation, New Delhi, to set up chain of building centres in the State of Rajasthan.

Appellant No.2 \026 the Rajasthan Housing Board sanctioned a sum of Rs. 1-5 lakhs per building centre and provided land free of cost for setting up of 9 such centres in Rajasthan. The AVS was to raise its own resources; the State Government or the Rajasthan Housing Board did not have any control over the AVS. The AVS had employed the respondents.

The AVS started functioning in the year 1989, but in the

year 1997, it began to incur heavy losses and could not pay its employees their salaries after 01.12.1998. The Rajasthan Government decided that, in view of the financial and administrative conditions of the AVS, it should be dissolved and the State Government directed the appellant-the Rajasthan Housing Board to take immediate steps to liquidate the AVS. The State Government also directed that the employees of the AVS would be adjusted on priority on the vacant posts of Municipal Boards, Municipal Councils, Jaipur Development Authority and other local bodies whenever posts fell vacant on the retirement of the employees of such local bodies. By the resolution of the AVS dated 26.03.1999, the AVS was dissolved.

The respondents (employees), feeling that their services might be terminated, filed a writ petition in the High Court on 26.03.1999, made the following averments:

? AVS is only an agent of the State Government of Rajasthan and of the Rajasthan Housing Board.

? The services of the respondents, who were employees of the State Government/Rajasthan Housing Board, could not be terminated by the Rajasthan Housing Board or the State Government or the AVS and

? Also if any termination order be passed it be quashed and they might be retained in service with benefit of their past services in all respects.

? The Government order dated 15.03.1999 was challenged by which the respondents were to be taken in service by local bodies viz. Panchayat, J.D.A. etc at the lowest grade of services without any benefit of past services. AVS terminated the services of all its 46 daily wage employees on 31.03.1999.

On 01.06.1999, State Government issued an order which contained directions regarding the manner in which the employees of the AVS would be given first appointment in the local self-Government institutions in Rajasthan without benefit of past service. The condition, which was put by the Government was that, they would be given employment on the lowest post of pay drawn in AVS of direct recruitment and on the minimum of the grade and no benefit of past service would be given to them. An option was also given to the employees to retire under Voluntary Retirement Scheme, if they so desired.

The Rajasthan Housing Board and the State Government of Rajasthan contested the writ petitions by filing replies.

? It was averred, inter alia, in the reply by the Rajasthan Housing Board that AVS was a registered Society under the Societies Registration Act, 1860.

? And it was neither financially nor administratively controlled by the State Government or the Housing Board and hence the said AVS could not be said to be a 'State' within the meaning of Article 12 of the Constitution of India and the employees were not employees of the State Government or Rajasthan Housing Board, they had no remedy against the State Government or the petitioner-Housing Board.

During the pendency of the writ petitions, an offer was made to the employees of the AVS to agree to be given new appointment in local self Government institutions on the condition mentioned in order dated 01.06.1999 of the State Government and the employees were asked to submit undertaking in the form of affidavits that they were willing to take employment in the Municipal Boards, Municipal Councils, J.D.A etc. on the conditions set out in the order and that on

such affidavits being filed, they would be given employment in such local Government institutions.

The respondents and all the other permanent employees of the AVS submitted their affidavits and were given employment in the Municipal Boards, Municipal Councils, and J.D.A.

Learned Single Judge of the High Court allowed the writ petition and held as under:-

- a) employees will be entitled to salary for the period worked by them;
- b) Rajasthan Housing Board to create a new cell in the name of the Low Cost Housing Centre or any other name and the employees would be employed in the said centre;
- c) The policy of the State Government to give alternate employment was quashed. However, the employees were given option to continue in the said employment if they so choose.

Feeling aggrieved, the Rajasthan Housing Board, the AVS and the State Government preferred appeals before the Division Bench of the High Court.

The Division Bench disposed of all the appeals by the impugned order. The Division Bench maintained the direction to pay unpaid salary. The direction to constitute a Low Cost Housing Centre and the quashing of State Government decision to provide alternate employment was set aside. However, the Division Bench on the appeal filed by the employees directed grant of following benefits:

- i) pay protection;
- ii) service to be counted for the purpose of pension and other retirement benefits;
- iii) benefit of fixed period higher pay scale available to Government employees under Government Order dated 25.01. 1992;
- iv) benefit of 5th Pay Commission to be available on notional basis;
- v) one Narendra Kumar Sharma and few other daily wagers to be treated as regular appointees as they were selected but not appointed on regular basis till date of dissolution;
- vi) certain employees including Brijesh Kumar Goel and R.K.Saini who were working at Latur Project in Maharashtra were also entitled to alternative employment in local bodies.

PARTICULARS OF APPEALS

The appeals in the present batch of cases may be divided in the following three categories:

A. The following 12 appeals have been filed by the RHB and AVS:

Civil Appeal Nos. 5302/04, 5317-5322/04, 5312-5316/04, 5309-5311/04, 5323-5327/04, 5328-5330/04, 5331-5336/04, 5342-5348/04, 5305-5308/04, 5337/04, 5303/04.

B. The following 11 appeals have been filed by the State of Rajasthan:

Civil Appeal Nos. 5339/04, 5371-5376/04, 5366-5370/04, 5309-5352-5354/04, 5377-5381/04, 5357-5359/04, 5360-5365/04, 5386-5392/04, 5382-5385/04, 5356/04.

C. The following appeal have been filed by the Employees:

Civil Appeal Nos. 5349-5351/04

Against the decision of the Division Bench of the High Court, the appellants preferred the above appeals to this Court.

We heard Mr. Vijay Hansaria, learned senior counsel appearing for the appellant and Dr. Rajeev Dhawan, learned senior counsel, Mr. Aruneshwar Gupta and Ms. Shobha, learned counsel appearing for the respective respondents.

Mr. Vijay Hansaria, learned senior counsel for the appellants made the following submissions:

- a) That after the dissolution of the AVS, in the writ petition preferred by the respondents no ground was taken saying that the liquidation was mala fide nor was it prayed that the decision to liquidate be quashed.
- b) That on 18.05.1999 Cabinet decision was taken to absorb the employees of the AVS 'in principle' as decided on 09.03.1999 by prescribing certain terms and conditions after considering the opinion of the Finance Department.
- c) That there is no conflict between the Cabinet decisions dated 09.03.1999 and 18.05.1999, neither is there any change in policy of the State Government nor the State Government has gone back on any promise made earlier. In the cabinet decisions dated 09.03.1999 only an 'in principle' decision was taken to adjust the employees of the AVS in other local bodies and 'modalities' of adjustment was worked out in the Cabinet decision dated 18.05.1999.
- d) Thereafter the State Government wrote to all local bodies for appointment of employees of the AVS in their departments along with affidavits filed by the employees of the AVS showing their willingness to take employment in other local bodies. In 2000, all the employees of the AVS were given alternate employment as fresh employment on certain terms and conditions. All the employees have submitted affidavits inter-alia stating that their appointment with local bodies will be treated as fresh appointment and will not claim continuity of service, seniority, pay protection etc and that they will withdraw writ petition. Several employees have even filed application for the withdrawal of the writ petition in terms of their undertakings.
- e) the writ petition was not amended challenging the terms of undertaking filed by the employees of Sansthan for securing employment with the local bodies. There is no allegation in the writ petition that the employees were coerced/forced/unduly influenced to submit the undertaking.

Submissions on Merit

It was submitted by Mr. Hansaria that abolition of posts is a matter of policy and is an inherent right of the employer particularly on the closure of a project due to lack of funds and heavy loss. The natural consequence of abolition of posts in any organization is the termination of services of the employees engaged in such organization. It was further urged that the employees whose services have been terminated as a consequence of abolition of posts have no right to seek reemployment or absorption in other departments. Learned senior counsel relied on the view taken by this Court way back in 1973 in the case of *M. Ramanathan Pillai v. State of Kerala*, (1973) 2 SCC 650 that 'the discharge of the civil servant on account of abolition of post held by him is not an action which is proposed to be taken as a personal penalty but it is an action concerning the policy of the State whether a permanent post should continue or not. The power to abolish any civil post is inherent in every sovereign government. And such abolition will not entail any right on the person holding the abolished post the right to reemployment or to hold the same post.

Learned senior counsel relied on the decision in

K. Rajendran v. State of Tamil Nadu, (1982) 2 SCC 273 on the same issue in which this Court has held that, 'the question whether a person who ceases to be Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice.'

Citing the decision of this Court in the case of Rajendra v. State of Rajasthan (1999) 2 SCC 317 and S.M.Nilajkar v. Telecom District Manager (2003) 4 SCC 27 learned senior counsel submitted that when a project has been shut down due to want of funds the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. And also that the same will act as a disincentive to the state to float such schemes in future.

With regard to the employment of 604 employees of the AVS, it was argued that the State of Rajasthan had no legal obligation to offer alternative employment to the erstwhile employees of the Sansthan. But the State of Rajasthan did frame a scheme and offered employment in other local bodies of the government. Therefore the terms and conditions of such alternative employment cannot be challenged.

It was also submitted that additional financial burden will fall upon the various local bodies which have absorbed the employees of the AVS, if the directions of the Division Bench of the Rajasthan High Court are enforced. It was further argued that the employees of the AVS did accept the alternative employment with the terms and conditions set out initially by way of an affidavit and therefore they are now estopped from claiming benefit and challenging the terms and conditions of the fresh employment by citing the decision in the case of Bank of India v. O.P.Swarnakar (2003) 2 SCC 721 which laid down that, "the scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand."

Placing reliance on a very recent decision of this Court in the State of Uttaranchal vs. Jagpal Singh Tyagi, (2005) 8 SCC 49, learned senior counsel submitted that, "the employees did not, at any point of time, claim that the terms of settlement were not fair, therefore after obtaining some benefit, it was not open to the employees to later turn away without justifiable cause and contend that the settlement was not fair."

On the question of Pay Protection and for counting services rendered in the AVS for pension and other retiral benefits claimed by the respondents, the arguments put forward by the appellant was that on facts the Cabinet decision of 18-05-1999 specifically states that "no pay protection should be granted to the employees", the same was conveyed by the Rajasthan Housing Board letter dated 01-06-1999. This decision was taken after considering the views of the Finance Department. So also the undertaking by the employees when they were absorbed into other local bodies had the same stipulation, therefore at this later stage such pay protection and counting of services for pension and other retiral benefits cannot be claimed for.

Coming to the claim of the respondents for the benefit of

the Government order date 25.01.1992, it was argued by the appellants that the Government Order in question is applicable only to 'government servants' and as such the employees of AVS are not entitled to the benefit of the said government order. And also the employees would be governed by the terms and conditions of the local bodies where they have been reemployed. So also the benefit of the 5th Pay Commission is applicable only to government employees. Since the employees of the AVS are not govt employees they are not entitled to the benefit of the 5th Pay Commission.

With regard to appointment of 46 daily wage employees, it was argued that after the dissolution of the Society, there is no right on the part of any employee to be reemployed. Therefore, it was argued that the daily wagers have no right seeking regular appointment. The decision of this Court in the case of Punjab State Electricity Board v. Malkiat Singh, (2005) 9 SCC 22 was relied on. It was held that, "it is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment". Thus it was argued that the Writ issued by the Division Bench of the High Court to treat the daily wagers at par with the regular appointees of Avas Vikas Sansthan is wrong.

Further it was argued by the appellant that the decision in the case of Central Inland Waters Transport corporation limited & Anr. Vs. Brojo Nath Ganguly & Anr., (1986) 3 SCC 156 and Delhi Transport Corporation vs. D.T.C. Mazdoor Congree & Ors., (1991) Supp 1 SCC 600 have no application here because those cases relate to a term in the employment that even services of a permanent employee can be terminated on 3 months notice without assigning any reason and such condition was specifically assailed therein. The present matter relates to providing alternative employment to the employees of an organization that is liquidated and posts have been abolished. In such circumstances the employees of an organization that is liquidated has no right to seek reemployment.

It was argued that the reliance placed by the respondents on the provisions of Rajasthan Civil Services Rules, 1969 is wholly misconceived as the Rules mentioned apply only to government servants. Therefore, these rules will not apply to employees of the AVS.

Dr. Rajeev Dhawan, learned senior counsel for the respondent submitted as follows:-

According to learned senior counsel, the judgment of the Division Bench of the Rajasthan High Court is correct in so far as it gave:

- a) Pay protection (including benefit of higher scales for completing of 9, 18 and 27 years)
- b) Counting of service for retiral benefits for long standing employees of the AVS.

Submissions on Law

The State is expected to act as a model employer exhibiting 'fairness of action' towards long standing employees. Learned senior counsel relied on the decision of this Court in Gurmail Singh v. State of Punjab, (1991) 1 SCC 748. It was laid down by this Court that even though according to the provisions of Section 25-FF of the Industrial Disputes Act, 1947, retrenchment compensation has been paid and accepted, the State was under a duty to treat employees who were on deputation and those who were dismissed equally because the state was a "model employer" exhibiting "fairness in action".

It was argued that the above case is an authority for the proposition that where a state body is shut down, it is part of the obligations of the state as a model employer dedicated to fairness in action that subject to adjustments, employees who were on deputation and those who are dismissed should be absorbed subject to similar equities:-

There should necessarily be: -

- ? Pay protection where appointments are made on a lower scale.
- ? Counting of Service for retiral benefits
- ? Placing the employees on par in the receiving departments including salary

Gurmail Singh (supra) has also laid down that it would not be fair to allow absorbed employees to steal a march over the employees in the department into which they are absorbed. However the regular appointees of such local bodies should not be put at a disadvantageous position by the loss of seniority due to the absorption of the employees of the AVS.

Following the decision in the case of Central Inland Waters Transport corporation limited (supra), it can be observed that:

1. Unfair labour contracts shock the conscience and are opposed to public policy.
2. Such unconscionability could be caused by economic duress
3. Inequality of bargaining powers vitiates contracts, such contracts also violate Article 14 of the Constitution
4. This Court in the present case applied Section 23 of the Contract Act and held the contract to be unconscionable and void.

"The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will when called upon to do so, strike down an unfair and unreasonable contract or an unfair or unreasonable clause in the contract, entered into by two parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men; one can only attempt to give some illustrations."

Further, learned senior counsel submitted that this Court in Delhi Transport Corporation v. DTC Mazdoor Congress, (supra) approved the Central Inland decision (supra) and struck down the unconscionable 'hire & fire' clause.

Our attention was invited to certain observations made by Ramaswamy, J. and B.C. Ray, J; which are as under:-

1. The State cannot impose unconscionable conditions and stated that such contracts were contrary to Article 14.
2. Public policy in contract be construed accordingly and be drawn from the constitution.

B.C. Ray, J. observed that there should not be any limitation on the freedom of contract and specifically approved Central Inland decision (supra) in respect of such contracts being contrary to Article 14 guaranteed under the Constitution. This Court further observed that, "The court has, therefore the jurisdiction and power to strike or set aside the unfavourable terms in contract of employment which purports to give effect to unconscionable bargain violating Article 14 of the constitution."

It was further observed in the case of Prakash Ramachandra v. Maruthi, 1995 Supp (2) SCC 539 that any undertaking to the court and contractual arrangement resultant thereto does not oust the jurisdiction or the power of the court to hear cases or grant relief.

Learned counsel for the respondents while citing the decision in National Building Construction Corporation v. Raghunathan, (1998) 7 SCC 66 argued that a legitimate expectation is created where employees have been assured absorption on one basis, which is there altered to their detriment under coercive circumstances where they have not been paid and acted on the previous promise that they have tried to enforce in court. It was further argued that the decisions cited by the appellant on Article 311 and abolishing civil posts are exceptional and irrelevant to the present controversy.

Therefore, according to learned senior counsel, the law clearly establishes that,

(a) The State must be a model employer and show fairness in action

(b) Even where all statutory requirements (such as Section 25 FF) and technicalities have been complied with, the State must be fair enough to absorb employees on a minimal fairness basis which includes:

- i) protection to pay scale
- ii) counting of past service for pensionary benefits
- iii) no seniority over new employees in the new

organization

- iv) equal treatment in future with all employees

(c) Unconscionable contracts and undertakings are contrary to section 23 of the Indian Contract Act, public policy, Article 14 of the Constitution and Directive Principles of state policies.

(d) Undertakings not accepted by the lower court (and even if accepted) do not inhibit this Court's jurisdiction to hear a matter and grant relief.

With regard to the argument of the appellant's counsel that:

(a) the employees should not be given pensions;

(b) the Division Bench should not have ordered increments at 7,13 & 27 years as are available to other employees the learned counsel argued that, if this was made practicable, the employees after joining the new department cannot be meted out discriminatory treatment. They will lose seniority, but they cannot be denied benefits available to others. The respondent's counsel also stated that a situation cannot be created where, a former AVS worker has no pension or Provident Fund and also not to discriminate by not to extending 9,18 & 27 years of service which would be available to others.

Mr. Aruneshwar Gupta, learned counsel for the respondent made the following submissions:-

That AVS falls within the definition of 'other authorities' under Article 12 of the Constitution and was managed, controlled and owned by the State of Rajasthan and was dealing with the affairs of the State by referring to the decisions of this Court in Federal Bank Ltd v. Sagar Thomas, (2003) 10 SCC 733 and Pradeep Kumar Biswas v. Indian Institution of Chemical Biology, (2002) 5 SCC 111.

It was further argued that the learned Single Judge clearly held that the entitlement of the employees was not on any humanitarian ground but because the employees had a right to

be absorbed and to be treated in a reasonable, just and proper manner.

According to Mr. Aruneshwar Gupta, the employees, who have been absorbed in the other authorities, were entitled to the following reliefs: -

1. Fitment in the stage of the pay scale, which they were already drawing in the Avas Vikas Sansthan and consequent increments.
2. Arrears of pay on the basis of the above statement
3. Seniority of the AVS vis-à-vis employees in the authorities in which they were absorbed. They are entitled to seniority in the other undertakings etc on the basis of date of their substantive appointment. Therefore inter se seniority of the employees of Avas Vikas Sansthan who were absorbed in other authorities.
4. Corresponding designation of post in the authorities in which they were absorbed.

Ms. Shobha, learned counsel appearing for the daily wagers submitted that some of the daily wagers were declared qualified but kept in the waiting list for non-availability of sanctioned vacant posts. According to her, the High Court has rightly appreciated the facts and circumstances of the present controversy issued appropriate directions for absorption and that the balance of equity lies in their favour in view of the fact that the respondents have successfully cleared the exemption for regular appointment and had to remain in the waiting list on the pretext that no vacant sanctioned post is available. It was also submitted that the appellants have absorbed/adjusted numerous employees of the AVS but few of them including the respondents have been left on the pretext that they were not the regular appointed employees. Concluding her arguments, she submitted that they are also entitled for similar treatment being duly selected employees of the AVS. It is also relevant to mention that the employees were not appointed against any project and the termination order was passed due to financial inviability of the AVS and not because of some fault of respondent No.1.

We have carefully considered the lengthy submissions made by learned counsel appearing for both the parties. We have also perused all the pleadings, annexures as well as the judgments of both the Single Judge and the Division Bench of the Rajasthan High Court

In our opinion, the submissions made by learned senior counsel for the AVS merit acceptance and stand to reason in the peculiar facts and circumstances of the case. Though the arguments of Dr. Rajeev Dhawan and Mr. Aruneshwar Gupta, learned counsel appearing for the employees are attractive on the first blush, yet on a careful reconsideration of the same, it has no merits.

In our view, after the liquidation of the AVS due to any reason unless such liquidation was malafide, there exists no right on the employees of such liquidated society for reemployment. In the present case, the Rajasthan Government did formulate a scheme to absorb the employees of the society into various other organizations with various terms and conditions to which the respondent employees agreed. There is no allegation in the writ petition that the employees were coerced/forced/unduly influenced to submit the undertaking. Therefore, at a later stage it is unfair to take claims of service conditions other than the ones that are stipulated and accepted earlier.

In the case of Rajendra v. State of Rajasthan, (1999) 2 SCC 317 and S.M. Nilajkar v. Telecom District Manager, (2003) 4 SCC 27 where a project has been shut down due to want of funds the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. This finding is applicable in the present matter and therefore the finding of the High Court is not fair to common conscience and also that the same will act as a disincentive to the state to float such schemes in future thereby reducing the employment opportunities of many.

POWER TO ABOLISH CIVIL POSTS

It is settled law that the power to abolish any civil post is inherent in every sovereign government and such abolition will not entail any right on the person holding the abolished post the right to reemployment or to hold the same post. In the present case, the State Government was benevolent enough to float a scheme to absorb such employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by counsel for the respondents with regard to unfairness meted out to the employees of Avas Vikas Sansthan hold no water.

With regard to 604 employees of the AVS, it was argued that the State of Rajasthan had no legal obligation to offer alternative employment to the erstwhile employees of the AVS. But the State of Rajasthan in all fairness did frame a scheme and offered employment in other local bodies of the government. Thus, the terms and conditions of such alternative employment cannot be challenged. We are of the opinion, that the decision of the High Court granting relief of reemployment with pay protection, seniority and pension is erroneous. We, therefore, direct the State of Rajasthan to strictly adhere to and implement its decision to offer employment in other local bodies in letter and spirit.

We further make it clear that all the erstwhile employees, if not already employed, should be employed in the local bodies as per the scheme formulated by the Government of Rajasthan in a war footing.

PAY PROTECTION

On the question of Pay Protection claimed by the respondents, it is seen from the Cabinet decision of 18.05.1999 that "no pay protection should be granted to the employees". The same was conveyed by the Rajasthan Housing Board vide letter dated 01.06.1999. This decision was taken after considering the views of the Finance Department. So the undertaking by the employees when they were absorbed into other local bodies had the same stipulation. This being so, such claim for pay protection, at this late stage, cannot be made. Thus, considering the categorical condition that the employees will not be given any pay protection, and moreover due to the absence of any legal right for pay protection to the employees of the AVS, such claims, in our opinion, cannot be sought for.

With regard to the claim of the respondents for counting services rendered in the AVS, the Cabinet decision of 18.05.1999 specifically states that "the benefit of past service is not to be counted for any purpose". The same was conveyed by the Rajasthan Housing Board letter dated 01.06.1999. Therefore the

undertaking by the employees when they were absorbed into other local bodies had the same stipulation; therefore at this late stage such claim for counting services rendered in the AVS for the pension and other retiral benefits, in our opinion, cannot be made.

Since the employees of the AVS are not treated as government servants, they are not entitled to claim the benefit of Government Order dated 25.01.1995, which is specifically applicable only to government employees and the benefit of the 5th Pay Commission Report also stands inapplicable as this was not a claim that was sought by the respondents at any stage in any court that had entertained this matter. Also the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 will not apply as such to these employees of the AVS as they clearly do not fall within the definition of Surplus Personnel as defined in the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.

As regards the question of whether Rajasthan Housing Board can be considered 'State' under Article 12 of the Constitution, no serious arguments were made by either counsel for the parties and, therefore, we are not expressing any opinion on the same and decide the other issues on the basis of the arguments advanced.

RIGHTS OF DAILY WAGERS

With regard to the appointment of 46 daily wage employees after the dissolution of the Society, we hold that, in the facts and circumstances of this case there is no right on the part of any employee to be reemployed. Also daily wage employees cannot, by any stretch of imagination, be put on par with regular employees under any law prevalent as of date. The finding of the Division Bench that they can be treated on par with regular employees and be given various reliefs is wrong and erroneous under law. Therefore, we are not granting any relief to the daily wage employees as their claim is not justified under law. However, the Government of Rajasthan may sympathetically consider absorption of these employees in the vacancy available if any in future by giving them preference to other new applicants in any of their local bodies etc. subject to the following conditions:

1. The employees will be entitled to salary/wages from the date of their re-employment and shall not claim for any past period;
2. The employees will not be entitled to pay protection, benefit of GO dated 25.01.1992, 5th Pay Commission and the service rendered by the employees will not be considered for pension and/or other retiral benefits;
3. The appointment of Degree holder/Diploma holder Engineers shall be on the post of Junior Engineer on the minimum scale of pay;
4. The appointment of employees of Administrative Department would be on the post of Junior Clerk on the minimum scale of pay;
5. The appointment would be subject to suitability and physical fitness;
6. The alternative employment would be granted subject to availability of vacancy preferably within a period of 3 months.

If they are absorbed in future the same will be treated as a fresh employment and employees/appointees will be governed by the rules and regulations of the absorbing Department if they are found suitable.

POWER TO ABOLISH POSTS AS A MEASURE OF ECONOMY:

It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a Government Servant has got to be recognized. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a Department which was abolished or abandoned wholly or partially for want of funds, the Court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been dislodged. In the instant case, the State of Rajasthan has framed a scheme and offered alternative employment in the other local bodies as a Welfare State on humanitarian grounds. As already noticed, the employees of the AVS have accepted alternative employment on terms and conditions of the local bodies and having filed a solemn statement by way of affidavit that they will not claim continuity of service by protection of seniority etc. nor will they challenge the terms of such employment and shall also withdraw the writ petition filed by them. They cannot now go around and say that the judgment of the Division Bench should be given effect to. In our view, they are estopped from claiming the benefits and challenging the terms and conditions of the fresh employment. The employees have no right to resile from the affidavits filed before the High Court. We have searched in vain in order to see as to whether there is any material to show that the settlement was intended to frustrate the order passed by the High Court. At no point of time, the employees raised any dispute as regards the fairness of the settlement. Having obtained the benefit, it was not open to them to turn down without justifiable reasons to contend that the settlement was not fair and they should be given pay protection, counting of service for retiral benefits and placing the employees on par in the receiving Department. The cabinet decision of not granting pay protection was taken after taking into consideration the views of the Finance Department as it has huge financial burden on the local bodies offering re-employment after relaxing their own recruitment rules. In our view, the aforesaid categorical condition that the employees would not be entitled to pay protection and in the absence of any legal right of pay protection and fresh employment consequent upon on fresh appointment on humanitarian grounds, the decision of the High Court to grant protection of pay is unsustainable and liable to be interfered with.

Dr. Rajeev Dhawan, learned senior counsel for the respondents, cited many decisions. Those cases, in our view, is distinguishable on facts and on law. In those cases, the High Court has directed protection of pay on the facts and circumstances as can be seen from a perusal of the same.

The cabinet decision dated 18.05.1999 specifically decided that their period of earlier service shall not be valid for any purpose. This was specifically conveyed by the State Government to the Rajasthan Housing Board vide letter dated 01.06.1999 and also the letter of the State Government dated 26.02.2000 to the various local bodies. It is stated that one of the terms of re-employment would be that earlier service tenure shall not be considered for any purpose. Furthermore, under the provisions of the AVS Employees Service Regulation, 1993, the employees of the AVS were entitled to provident fund. Rule 14 provide as under:-

"An employee of Sansthan shall be required to subscribe to the Contributory Provident Fund in

accordance with such Rules as may be prescribed by the Board of Management."

The employees of the AVS were having the benefit of contributing provident fund and were not entitled to any other pensionary/retiral benefits. The employees have withdrawn provident fund including the employer's contribution after termination of service from the AVS. It is thus crystal clear that the services rendered by the employees with AVS cannot be counted for the purpose of pension and other retiral benefits since such benefits were not available to them even in their parent organization and it was a specific condition of fresh employment that their past services with AVS will not be considered for any purpose.

Even in A.I. Railway Parcel & Goods Porters Union vs. Union of India & Ors, (2003) 11 SCC 590 at 603 page 34 one of us was a member (Dr. AR. Lakshmanan, J) while giving various directions in the matter of regularisation of contract labour, this Court did not direct that the services rendered by the contract labourers with the contractor would be counted for the purpose of grant of retiral benefits by the principal employer. The recommendations of the 5th Pay Commission is applicable only to Government Servants and as such the employees of AVS who are not government employees are not entitled to 5th Pay Commission even in the writ petition filed by the organisation there was no prayer for grant of benefit of 5th Pay Commission. Thus, the High Court has erred in directing that the benefit of recommendations of 5th Pay Commission shall be given to the employees of the AVS on notional basis. We make it clear that the employees would be governed by the terms and conditions of the local bodies where they have been re-employed.

At the time of hearing, a submission under the heading doubts of financial bona fides was made. It is submitted that the said plea is without any pleading in the writ petition. There is no pleading either on facts or in the grounds in the writ petition that the averments contained in the note dated 09.03.1999 and 18.05.1999 to the effect that the AVS has no capital base or reserve capital and has huge financial outstanding is incorrect. It is also not in dispute that the employees of the AVS could not be paid salaries of December, 1998 that amounted to about more than Rs.2 crores nor the writ petitioners/respondent employees have argued either before the Single Judge or before the Division Bench of the High Court that the liquidation of the AVS was mala fide and or extraneous consideration. So also there is no averment in the writ petition as regards the constitution of the AVS or the work of the AVS being transferred to the AVS. As a matter of fact, the AVS was incorporated under the Companies Act in the year 1996 and the AVS has majority share holding in AVS in the absence of any other pleading and contention raised before the High Court such submission on facts cannot at all be countenanced before this Court in the present proceedings. Likewise, the submission made by learned counsel appearing for the employees that the State has gone back on its decision and they have coerced the employees to agree to certain conditions cannot at all be countenanced.

FAIRNESS IN ACTION:

In our opinion, the State of Rajasthan has acted fairly and benevolently though the State has no constitutional and legal obligation to offer alternative employment to the employees of the AVS upon abolition of posts. Consequent to the liquidation of the AVS itself, it had framed a scheme to adjust the employees

in other local bodies by relaxing the rules of such bodies and terms and conditions were fixed without financial economic compulsions of the State. The present case is one of liquidation of an organisation and consequent abolition of post in the said organisation. There is also no pleading that the conditions contained in the undertaking are contrary to Section 23 of the Contract Act or violative of Article 14 of the Constitution or inconsistent with the directive principles of state policy. The Central Inland Waterways case (supra) and Delhi Transport Corpn. Case (supra) relied on by these employees, in our view, have no application of the present case and is distinguishable on facts and law. Those cases relate to a term in the employment that even services of a permanent employee can be terminated on 3 months' notice without assigning any reason and such condition was specifically assailed therein. However, the present case relates to providing alternative employment to the employees of an organisation that is liquidated and posts have been abolished. In such circumstances, this Court has held in a number of cases that the employees have no right to seek re-employment in any other organisation. So also, there has been no challenge in any of the case decided by the High Court to the terms and conditions of undertaking that they were unfair, arbitrary and are contrary to public policy and as such violative of Section 23 of the Contract Act or Article 14 of the Constitution of India or any directive principles of state policy.

The question of legitimate expectation has also not been raised at any stage and as such cannot be agitated before us in this court

The reliance on the provisions of Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 is wholly misconceived in as much as the said rule apply only to "surplus personnel" who were "appointed to various services or posts in connection with the affairs of the state" in terms of Rule 2 of the said Rules. Surplus personnel have been defined in Rule 3(1) as follows:

"Surplus Personnel" or "Surplus Employee" means the Government servant to whom the Rajasthan Services Rules, 1951 apply and who are declared surplus by the government or by the appointing authority, under directions of the government, on their being rendered surplus to the requirements of a particular department of the government due to the reduction of posts or abolition of offices therein as measures of economy or on administrative grounds but in whose case the Government decides not to terminate their services but to retain them in service by absorption on other posts."

A bare perusal of the aforesaid Rule clearly demonstrates that the rules are applicable only to the Government servants to whom Rajasthan Service Rules, 1951 apply. The employees of Avas Vikas Sansthan are not government servants nor Rajasthan Service Rules, 1951 were applicable to them and as such the provisions of Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 are not applicable in the present case.

Further submissions of the learned counsel that the employees must be posted on the posts earlier held by them is without any merit since these employees had no right to claim adjustments to other local bodies. The Cabinet decision dated

18.05. 1999 have categorically stated as under:
"All these appointments should be made to the lowest posts and engineers should be appointed only on the post of Junior Engineers and Employees of Administrative Departments should be appointed only on the post of Junior Clerk."

So also all these employees have given undertaking not to raise any dispute in the matter. Thus this contention is untenable and is liable to be rejected.

For the foregoing reasons, the impugned judgments of the High Court are set aside and we hold that all the civil appeals filed by the Rajasthan Housing Board, the AVS and the State of Rajasthan are allowed. The Civil Appeals filed by the employees stand dismissed. No costs.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5338 OF 2004

State of Rajasthan .\005. Appellant (s)

Versus

Radha Krishan Karwashra & Ors. \005.. Respondent (s)

WITH

CIVIL APPEAL NOS. 5340-41/2004

ORDER

It was submitted by Mr. Badridas Sharma, learned counsel for the appellants, that the above appeals are of an entirely different type in which the respondent had challenged the order dated 25.04.1998 of the Avas Vikas Sansthan and by that letter/order, it was pointed out that 10 employees including Mr. Radha Krishan Karwashra had not accepted to join and do the alternative work offered to them and, therefore, those persons were treated as no more in the service of the Avas Vikas Sansthan. That the order of 25.04.1998 was not at all related to dismissal of service of employees as a result of dissolution of the Society. It was submitted that the writ petitions challenging the said order dated 25.04.1998 are still pending in the High Court at Jaipur in writ petition Nos. 5370/1998 and 5383/1998. Since this fact was pointed out by Mr. Badridas Sharma during the time of hearing of these appeals, we do not consider the merits of the claim made in this appeal. In view of this, the above appeals are delinked from the batch of appeals in Civil Appeal Nos. 5302/2004 etc. etc. and disposed of accordingly. Both parties are at liberty to pursue the pending writ petitions before the High Court in accordance with law. No costs.