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C.A.No. 6116 OF 2000
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ITEM NO. 1-D COURT NO. 7 SECTION XV
(For Orders)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 6116/2000

U.P. State Sugar Corpn. Ltd. .. Appellant (s)

Vs.

Om Prakash Upadhyaya .. Respondent(s)

(Prayer for interim relief and office report)

DATE : 8.8.2001 : This/These matter (s) was/were called on for pronouncement of
CORAM : order today.

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Appellant (s) :
Mr. Pradeep Misra, Adv.
Mrs. Indu Misra, Adv.

For Respondent (s) : Mr. Girdhar G Upadhyay, Adv.
Mr. K.P. Singh, Adv.

O R D E R

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The appeal is dismissed. No costs.
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Charanjit [Om Prakash]
Court Master

{ Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6116/2000@@
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U.P. State Sugar Corporation Ltd. .. Appellant

Vs.

Om Prakash Upadhyay .. Respondent

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The respondent was appointed as an Apprentice for one year on a monthly stipend of Rs.300/- for getting training of General Clerk. His engagement was under the provisions of Apprentices Act for which a contract was also entered into between the parties on 29.1.1997. On completion of his training for a period of one year his engagement stood dis-continued. It is claimed that the respondent could not gain full knowledge during his training and, therefore, he requested for one more year of training under the appellant. At his behest, he was engaged for one more year as an Apprentice. When that period came to an end on 21.4.1989, it is stated that his engagement as Apprentice came to an end. The respondent, however, raised an industrial dispute which was referred to the Labour Court by the State Government under the U.P. Industrial Disputes Act. The contention put forth on behalf of the appellant that the respondent is not an employee of the appellant and there was no relationship of master and servant between them was not accepted by the Labour Court. The Labour Court found that though the

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respondent was initially appointed as Apprentice for one year, his services were thereafter engaged not as an Apprentice under the Apprentices Act and, therefore, it must be deemed that he was in some kind of employment and, therefore, termination of his services amounted to 'retrenchment' under the U.P. Industrial Disputes Act. The Labour Court also held that the claim of the appellant that the termination of employment or engagement of service of respondent was in terms of Section 2 (oo) (bb) of the provisions of the Central Industrial Disputes Act would not be attracted inasmuch as there was no provision akin to it in the U.P. Industrial Disputes Act. The Labour Court thus held that the termination of the services of the respondent is illegal and that he is entitled to reinstatement with

continuity of service. The award made by the Labour Court in the aforesaid manner was challenged in a writ petition before the High Court.

The High Court by an interim order made on 10.5.1994 directed that the respondent should be taken back to the post in which he was employed and he should be paid the current salary subject to the final orders in the writ petition. Thereafter, the High Court upheld the award made by the Labour Court and made it clear that the

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engagement of services of the respondent after 21.4.1989 not being as an Apprentice under the Apprentices Act, it must be held that he was employed on regular basis falling under the definition of 'workman' under Section 2(z) of the U.P. Industrial Disputes Act.

On the application of the State Act or the Central Act to the case on hand, the High Court followed a Division Bench ruling in Jai Kishun vs. U.P.@@ CCCCCCCCCCC CCCC Co-operative Bank Ltd. reported in 1989 UPLBEC 144 and@@ CCCCCCCCCCCCCCCCCCCCCC made it plain that the provisions of Section 2 (oo) (bb) of the Central Industrial Disputes Act would not apply in respect of proceedings arising under the U.P. Indusrial Disputes Act. The High Court also noticed the contrary view in this regard in the case of Smt. Pushpa Agarwal@@ CCCCCCCCCCCCCCCCCCCC v. Regional Inspectress of Girls School, Meerut reported@@ CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC in (1995) 70 FLR 20 but held that in Jai Kishun's case@@ CCCCCCCCCCCCCCCCC (supra) the relevant provisions had been duly considered@@ CCCCCCC which are not taken note of in the Pushpa Agarwal's case@@ CCCCCCCCCCCCCCCCCCCC (supra) and on that basis, it followed the decision in@@ CCCCCCC Jai Kishun's case (supra). It is this judgment that is@@ CCCCCCCCCCCCCCCCCCCCCCCCC brought in appeal before us in these proceedings.

The definition of 'retrenchment' under the State Act is identical to the one available in the Central Act

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prior to the amendment by Act 49 of 1984. It is not in dispute that the law, as applicable then, would be applicable to the present case if the Central Act is not attracted.

The law is settled that under the Central Act every case of retrenchment would not include a case of contractual termination which came to be introduced under the Central Act by Amending Act 49 of 1984 which purports

to exclude from the ambit of the definition of 'retrenchment', inter alia, : (i) termination of service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. Such a case is not available under the U.P. Industrial Disputes Act. If the U.P. Industrial Disputes Act covers the present case then termination of the services of the respondent would certainly result in retrenchment while it is not so under the Central Industrial Disputes Act in view of exceptional clauses referred to above. While the former situation results in retrenchment, the latter situation does not amount to retrenchment if the same case would arise under the State Industrial Disputes

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Act. Thus operation of the two enactments would bring to the forefront the obvious repugnancy between them. In such a case as to how the question is to be resolved needs to be considered in the present case.

Inasmuch as the enactments, both by the State and the Centre, are under the Concurrent List, we are urged to look to Article 254(2) of the Constitution of India. If we view from that angle, the U.P. Industrial Disputes Act also covers the same field as the Central Industrial Disputes Act. However, Section 2(oo)(bb) is obviously a special provision enacted in order to understand the meaning of 'retrenchment' and that is the law made by Parliament subsequent to the State enactment and naturally falls within the proviso to Article 254(2). If that is so, the Central Act will hold the field because in the State enactment there is no provision akin to Section 2 (oo) (bb) of the Central Industrial Disputes Act. Therefore, we would have taken that view but for the special provisions in the Central Act to which we will advert to hereinafter.

Section 1(2) of the Central Act provides that "the Act extends to whole of India" and this sub-section was substituted for the original sub-section (2) by the

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Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956 (36 of 1956) with effect from 29.8.1956. Under that Act Section 31 (which came into force from 7.10.1956) has been introduced which reads as follows :

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"31. Act not to override State@@
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laws - (1) If, immediately before the@@

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commencement of this Act, there is in force in any State any Provincial Act or State Act relating to the settlement or adjudication of disputes, the operation of such an Act in that State in relation to matters covered by that Act shall not be affected by the Industrial Disputes Act, 1947, as amended by this Act.

(2) For the removal of doubts it is hereby declared that nothing in this section shall be deemed to preclude the Central Government or the National Tribunal from exercising any powers conferred on it by the Industrial Disputes Act, 1947, as amended by this Act."

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Sub-section (1) of the said Section makes it clear that the operation of the State Act will not be affected by the Central Act. With this legislative history of the law, we think the High Court is justified in its view.

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Several decisions referred to by the learned counsel are not on the point germane to this case and, therefore, we do not propose to refer to the same.

In the result, the order made by the High Court is affirmed and the order made by the Labour Court shall be given effect to in full. The appeal is dismissed accordingly. No costs.

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[S. RAJENDRA BABU]@@
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[DORIASWAMY RAJU]@@
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New Delhi,@@
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August 8, 2001 @@
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