(14) It was also contended on behalf of the respondent that the Tribunal was in error in holding that the convener of the meeting had given 48 hours notice. He also challenged further observations made by the Tribunal to the effect that even if the notice was short the election petitioner (respondent herein) could not substantiate as to how he was prejudiced by that fact because all the members of the committee including the M.L.A. of Ghagga had been served. All the elected members of the committee were present in the meeting and cast their vote. In view of this factual position, I am of the opinion that the Tribunal was right in rejecting the contention of the respondent. There was no material on the record before the Tribunal to show as to how the respondent was prejudiced. Moreover, the prejudice caused should have materially affected the result of the election in so far as it concerned a returned candidate and not of any other candidate. I have, therefore, no hesitation in upholding the finding of the Tribunal in this regard.

(15) In the result, the appeal is allowed, the impugned order of the Election Tribunal, Patiala is set aside and the election petition filed by Harjit Kumar respondent dismissed. There is no order as to Costs.

R.N.R.

Before Hon'ble N. K. Sodhi, J.

M/S MARUTI UDYOG LTD.,—*Petitioner.*

versus

RAM LAL AND OTHERS,—*Respondents.*

C.W.P. No. 15728 of 1993

19th April, 1995

Constitution of India. 1950—*Arts.* 226/227—*Industrial Disputes Act,* 1947—*Maruti Limited (Acquisition and Transfer of Undertaking) Act,* 1980—*Workmen retrenched prior to acquisition of Maruti Udyog Limited—Retrenchment not challenged in any forum—After acquisition in* 1980 *workmen claiming preferential right of re-employment u/s* 25-*H—Under Acquisition Act only assets of Company in Liquidition Maruti Limited were taken and not liabilities—Acquired Company cannot be said to be Successor-in-Interest of Company which was under Liquidation at the time of acquisition—Claim for re-employment cannot be made against Maruti Udyog Limited, which was not a Successor of the Company so as to be under an obligation to offer re-employment.*

Held, that the workmen were retrenched by the company in August, 1977 and they did not challenge thier retrenchment. The company thereafter went into liquidation and its undertakings came to vest in the petitioner by virtue of the provisions of Section 3 and 6 of the Acquisition Act. What the petitioner acquired were the assets of the company in relation to its undertakings but the liabilities of the company were never taken over by the petitioner. Section 5 of the Acquisition Act specifically provides that every liability of the company prior to the appointed day i.e. October 13, 1980 shall be enforceable against it and not against the petitioner. The petitioner cannot, therefore, be said to be a successor-in-interest of the company so as to step into the shoes of the latter and become liable to offer re-employment to the workmen in terms of Section 25-H of the Act. Under Section 25-H a workman can claim re-employment after retrenchment only from that employer who had retrenched him. In the instant case, the workmen had never been in the employment of the petitioner nor did the petitioner retrench them. They were in the employment of the company and it is the company which retrenched them in August, 1977. Thus, the claim for re-employment, if any, could be made against the company only and not against the petitioner.

(Para 7)

Further held, that the workmen had been retrenched in August, 1977 and that retrenchment had become final. The Labour Court has not taken a correct view of law and erred in holding that the petitioner is a successor of the company so as to be under an obligation to offer re-employment to the workmen who were retrenched by the company.

(Para 8)

M. L. Sarin, Sr. Advocate with Alok Bhasin, Advocate, *for the Petitioner.*

Amar Vivek, Advocate for respondent No. 1 to 3, *for the Respondent.*

JUDGMENT

N. K. Sodhi, J.

(1) What is challenged in this petition under Article 226 of the Constitution is the award of the Labour Court dated July 28, 1993 holding that respondent 1 to 3 are entitled to be re-employed by M/s Maruti Udyog Limited, the petitioner herein.

(2) The circumstances under which the reference was made by the State of Haryana may be stated. Ram Lal, Jhinak Prasad and

Sampat Parshad (hereinafter called the workmen) were employed as Electrician, Helper and Assistant Fitter respectively by M/s Maruti Limited (for short the company), incorporated under the provisions of the Companies Act, 1956 and which was carrying on its business activities at Gurgaon. The service of these workmen were retrenched by the Company with effect from 26th August, 1977 and 25th August, 1977 though there is a dispute between the parties as to whether any retrenchment compensation was paid or not. However, we are not concerned with this dispute in the present case. The workmen never challenged their retrenchment and, therefore, the master servant relationship between them and the company came to an end. Due to certain unanticipated adverse factors the company could not achieve the expected level of its production and meet its financial obligations. There was a run on the company by its creditors as a result whereof liquidiation proceedings were initiated in this Court and an order for winding up the company was passed on March 6, 1978 and the Official Liquidator attached to this Court was appointed its Liquidator. While liquidation proceedings were continuing the Parliament enacted the Maruti Limited (Acquisition and Transfer of Undertakings) Act, 1980 (hereinafter called the Acquisition Act). This Act was enacted to provide for the acquisition and transfer of the undertakings of the company in order to secure the utilisation of the available infrastructure, to modernise the automobile industry, to effect a more economical utilisation of scarce fuel and to ensure higher production of motor vehicles which were considered essential for the needs of the economy of the country. According to Section 3 of this Act, the undertakings of the company and its right, title and interest in relation to its undertakings stood transferred to and vested in the Central Government. It was further provided that all properties which vested in the Central Government shall be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction, decree or order of any court restricting the use of such properties in any manner shall be deemed to have been withdrawn. By virtue of Section 5 of the Acquisition Act, every liability of the company in respect of any period prior to the appointed day, shall be the liability of the company and shall be enforceable against it and not against the Central Government, or, where the undertakings of the company are directed under section 6 to vest in a Government company, against that Government company. Section 6 then provides that the Central Government may, subject to such terms and conditions as it may think fit to impose direct by notification, that the undertakings of the company, and the right, title and interest of the company in relation

to its undertakings, which have vested in the Central Government under section 3 shall, instead of continuing to vest in the Central Government, vest in a Government company either on the date of the notification or on such earlier or later date, as may be specified in the notification. Sub-section (2) then provides that where the right, title and interest of the company, in relation to its undertakings, vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall on and from the date of such vesting, be deemed to have become the rights and liabilities of the Government company. Chapter IV of the Acquisition Act makes some provisions relating to the employees of the company. Sub-section (1) of Section 13 which is relevant for our purpose is reproduced hereunder for facility of reference :—

> "13. *Employment of certain employees to continue.*—(1) Every person who has been, immediately before the appointed day, employed in any of the undertakings of the Company shall become :—
>
> (a) on and from the appointed day an employee of the Central Government ; and...
>
> (b) where the undertakings of the Company are directed under sub section (1) of section 6 to vest in a Government company, an employee of such Government company on and from the date of such vesting, and shall hold office or service under the Central Government or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Government company, as the case may be."

(3) It will be seen that by virtue of the provisions of Section 3 the undertakings of the company came to vest in the Central

Government. This Government then in exercise of its powers under Section 6 of the Acquisition Act directed by a notification dated April 24, 1981 that the undertakings of the company and the right, title and interest of the company in relation to its undertakings which had vested in it shall now vest in Maruti Udyog Limited the petitioner—a Government company. It is agreed between the parties that the petitioner company was constituted some time prior to April 24, 1981.

(4) The workmen who had been retrenched by the company in August, 1977 claimed that the petitioner was recruiting many Electricians, Helpers and Fitters which jobs they held with the company and since the petitioner was a successor-in-interest of the company, the petitioner should re-employ them as enjoined by Section 25-H of the Industrial Disputes Act, 1947 (for short the Act). Since the claim of the workmen was not accepted by the petitioner, the former served demand notices on the latter in January, 1986 and December, 1987. On the basis of these demand notices, the State Government referred the following three disputes for adjudication under Section 10(1) (c) of the Act to the Presiding Officer, Labour Court, Gurgaon :—

(i) Whether Shri Ram Lal is entitled for re-employment ? If yes, with what details ?

(*ii*) Whether Shri Jhinak Prasad is entitled for re-employment? If yes, with what details ?

(iii) Whether Shri Sampat Parshad is entitled for re-employment ? If yes, with what details ?

(5) The petitioner in its written statement before the Labour Court raised a number of preliminary objections stating that the workmen were employees of the company and that there was no master servant relationship between them and the petitioner and, therefore, they could not claim the relief of re-employment from the petitioner. It was also pleaded that the petitioner was not a successor-in-interest of the company as it had only taken over the assets of the company and not its liabilities and that the workmen had never been in the employment of the petitioner. Since the references involved identical questions of law and fact, the Labour Court decided them by the impugned award (Annexure P4 with the petition) holding that the petitioner was a successor-in-interest of the company and that the workmen were entitled to be re-employed in terms of Section 25-H of the Act. The references were accordingly

answered in favour of the workmen and against the petitioner. It is this award which is now under challenge in this petition.

(6) The argument of the petitioner is that in view of the provisions of the Acquisition Act, Labour Court was not right in holding that the petitioner was a successor-in-interest of the company and since the workmen had never been in the employment of the petitioner, they could not claim the relief of re-employment from it. Their claim, if any, could be against the company. The workmen on the other hand reiterated the stand taken by them before the Labour Court and submitted that the petitioner was a successor-in-interest and, therefore, when it was employing persons of the class to which the workmen belong, it was incumbent upon it to have offered re-employment to them in preference to others and not having done so the Labour Court was justified in issuing a direction in this award.

(7) I have heard counsel for the parties at length and am of the view that the petition deserves to succeed. It is not in dispute that the workmen were retrenched by the company in August, 1977 and they did not challenge their retrenchment. The company thereafter went into liquidation and its undertakings came to vest in the petitioner by virtue of the provisions of Sections 3 and 6 of the Acquisition Act. What the petitioner acquired were the assets of the company in the shape of right, title and interest of the company in relation to its undertakings but the liabilities of the company were never taken over by the petitioner. Section 5 of the Acquisition Act specifically provides that every liability of the company prior to the appointed day i.e. October 13, 1980 shall be enforceable against it and not against the petitioner. The petitioner cannot, therefore, be said to be a successor-in-interest of the company so as to step into the shoes of the latter and become liable to offer re-employment to the workmen in terms of Section 25-H of the Act. Under Section 25-H a workman can claim re-employment after retrenchment only from that employer who had retrenched him. In the instant case, the workmen had never been in the employment of the petitioner nor did the petitioner retrench them. They were in the employment of the company and it is the company which retrenched them in August, 1977. Thus, the claim for re-employment, if any, could be made against the company only and not against the petitioner.

(8) The matter can be looked at from another angle as well. The Acquisition Act while acquiring the assets of the company and vesting them in the Central Government and thereafter in the petitioner is not silent about the employees of the company. Section 13

of the Acquisition Act specifically provides that every person who has been, immediately before the appointed day i.e. October 13, 1980, employed in any of the undertakings of the company shall become an employee of the Central Government or of a Government company if the Central Government directs under section 6 the undertaking of the company to vest in that company. In the present case, the Central Government directed that the undertakings of the company shall vest in the petitioner with effect from April 24, 1981. Therefore, only those persons would become employees of the petitioner who were in the employment of the company on October 13, 1980 which admittedly the workmen were not. They had already been retrenched in August, 1977 and that retrenchment had become final. The Labour Court in my opinion has not taken a correct view of law and erred in holding that the petitioner is a successor of the company so as to be under an obligation to offer re-employment to the workmen who were retrenched by the company.

(9) Before concluding I may refer to the judgment of the Supreme Court in *The Workmen* v. *The Bharat Coking Coal Ltd. and others* (1), on which strong reliance was placed by Mr. Amar Vivek, Advocate appearing for the workmen. In that case the management of the New Dharmaband Colliery dismissed 40 workmen in October 1969 and while their dispute was pending before the Industrial Tribunal, the Colliery was nationalised on May 1, 1972. Its undertakings came to vest in the Central Government who directed that they shall further vest in a Government company known as Bharat Coking Coal Company Ltd. The Industrial Tribunal as per its award dated July 1, 1972 directed reinstatement of the workmen. Section 9 of the Coking Coal Mines Nationalisation Act, 1972 whereby the Colliery was nationalised is similar to Section 5 of the Acquisition Act with which we are concerned in the present case. Relying on the provisions of Section 9, the Government company contended that since every liability of the owner prior to the take over was the liability of such owner, therefore, the Government company was not bound to reinstate the workmen as directed by the Tribunal. This contention was negatived by Their Lordships of the Supreme Court holding that the employees are not a liability and, therefore, Section 9 was not attracted. It was further held that in terms of Section 17 of the Coking Coal Mines Nationalisation Act, 1972, which is analogous to Section 13 of the Acquisition Act before us the dismissed workmen who had been reinstated by the Tribunal would be deemed to be the persons in the employment of the owner prior to its take over

(1) 1978 Lab. I.C. 709.

and, therefore, the Government Company was bound to reinstate them. The plea of the workmen was accepted and they were directed to be reinstated. This case is of no help to the workmen in the present case because in the case before us retrenchment of the workmen had become final and they had never challenged the same. Had they challenged their retrenchment and if that had been set aside in any appropriate proceedings, they could have then claimed that they should be deemed to be in the employment of the company immediately prior to the appointed day and thereafer in the employment of the petitioner but such is not the case here.

(10) In the result, the writ petition is allowed and the impugned award of the Labour Court quashed. There is no order as to costs.

R.N.R.

Before Hon'ble R. P. Sethi, Jawahar Lal Gupta & N. K. Kapoor, JJ.

RAKESH KUMAR SINGLA,—*Petitioner.*

versus

STATE OF HARYANA & ANOTHER,—*Respondents.*

C.W.P. No. 15034 of 1993

21st July, 1995

Constitution of India, 1950—Art. 226—Haryana Government Circular dated 2nd June, 1989—Grant of selection grade admissible after 12 years regular service—Ad hoc service whether can be counted towards length of service/regluar service—Where ad hoc service is otherwise countable for the purposes of seniority and other benefits, it would be countable for the purpose of regular service in the context of circular dated 2nd June, 1989.

Per majority, J. L. Gupta, J. dissenting.

Held, that the circular dated 2nd June, 1989 was never intended to be a departure from the general principles of the service rules applicable to the civil servants nor was it intended to create a special class of civil servants being entitled to the grant of senior scale of pay to be determined in isolation of the service rules or the principles of law applicable which were held to be governing their service conditions.

(Para 35)