to the order passed by the Court, however, a factual error may not attract a presumption of truth. Such an error would not be covered by setting up a plea that once a concession has been made by counsel then the same could not be withdrawn. Therefore, we find that there is an error apparent on the face of the record in the orders passed by the learned Single Judge on 10.10.2007 and 4.2.2009. Accordingly, we find no merit in the argument raised by the learned State counsel that the order of the learned Single Judge is based on the concession given by the counsel when the counsel of the petitionerappellants, in fact, was not even present. Accordingly, we have no hesitation to reject the aforesaid argument.

(24) For the reasons stated above, this appeal is allowed. The order dated 10.10.2007 and 4.2.2009 are hereby quashed. A direction is issued to the respondents to consider the case of the petitioner-appellants for promotion to the post of Sub Divisional Engineer/Assistant Engineer against the vacancies pertaining to the year 1999 or earlier thereto in accordance with the provisions of the 1941 Rules. The needful shall be done within a period of three months from the date of receipt of a copy of this order.

M. Jain

Before M.M.Kumar & Gurdev Singh, JJ.

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS,—*Appellants*

versus

RAKESH KUMAR NANGLU AND ANOTHER,—*Respondents*

LPA No.872 of 2011

24th August, 2011

Respondent suffered 90% permanent disability while working as daily wager with appellant corporation - Filed writ petition seeking appointment - On first date of hearing, appellants were directed to give suitable appointment to respondent before next date of hearing - Appellant challenged interim order by way of filing instant LPA - Appeal allowed - Interim order set aside - Held - Ordinarily mandatory injunction should not be issued without affording opportunity to other side.

Held, That these principles have been laid down in umpteen judgments which we need not multiply. It is, therefore, suffice to say that ordinarily no mandatory injunction should be issued without affording opportunity to the other side.

(Para 6)

Further held, That in view of the above, we set aside the mandatory directions issued in order dated 28.02.2011 and 12.05.2011 with a request to the learned Single Judge to consider the case dispassionately by taking into account the stand of the appellants reflected in the written statement which is to be filed by 05.09.2011. We wish to clarify that the learned Single Judge shall not be influenced by any observations made in this order as we have not expressed any opinion on the merit of the controversy.

(Para 9)

R.S. Khosla, Advocate, *for the appellants.*

Ashok Bhardwaj, Advocate, for respondent No.1.

Suvir Sehgal, Addl. A.G., Punjab for respondent No.2.

M.M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent is directed against interlocutory orders dated 28.02.2011 and 12.05.2011 rendered by the learned Single Judge. It is appropriate to mention that the writ petition filed before the learned Single Judge came up for hearing for the first time on 28.02.2011 when the mandatory directions were issued to the appellants that an appropriate order giving suitable appointment to the petitioner respondent be passed before the adjourned date i.e. 03.05.2011, failing which Managing Director of the appellant-Corporation was to remain present in the Court. A further direction was also issued that if there was no sanctioned post with the appellant-Corporation against which the writ petitioner-respondent could be given suitable appointment then they may approach the State Government who in turn was mandated to accord permission for creation of the post. It was further directed that the writ petitioner-respondent was required to be given appointment keeping in view the nature of disability suffered by him while performing his duty. In the earlier part of the order, it has been noticed that he has suffered 90% permanent disability while working as daily wager with the appellants-Corporation.

(2) Mr. R.S. Khosla, learned counsel for the appellant has argued that issuance of mandatory directions on the first date of hearing, ordinarily would not be permissible unless an exception pieced is carved out resulting into such an irreparable loss that it cannot be rectified rectified. According to learned counsel, the principle regarding exercise of jurisdiction for issuance of mandatory directions are clearly well settled and an opportunity to file written statement to appreciate the stand taken by the appellant should ordinarily be granted. Learned counsel has maintained that the writ petitioner-respondent has been without job since 18.07.1995 and further disability when he was repairing roof sheets at Generator shed of Anandpur Sahib Hydel Project. It was at that time he slipped and fell down on the iron sheets resulting into damage of his backbone and his disability was assessed to 90%.

(3) Mr. Ashok Bhardwaj, learned counsel for respondent No.1, states that it is in fact, an exceptional case and there is no limit put on the writ court to exercise jurisdiction at any stage to reach injustice. Learned counsel has maintained that the writ petitioner respondent has suffered 90% disability and there is nothing wrong with the order passed by the learned Single Judge on the first date of hearing i.e. 28.02.2011 and thereafter on 12.05.2011 . It has also been submitted that the stand of the appellants which they have taken before the Punjab Human Rights Commission at Chandigarh was already on the file and it is not a case where the learned Single Judge would be regarded to have exercised jurisdiction without considering the plea of the appellants.

(4) We have heard learned counsel for the parties and are of the view that the Court should be slow in issuing mandatory directions, particularly when a person has been without any employment since 1995. The effort of the Court should be to permit an opportunity to the other side before passing any order of mandatory nature. It is only in rare cases where mandatory directions may be issued e.g., where irreparable or irreversible loss is caused. For the aforesaid view, we place reliance on a recent judgment of Hon'ble the Supreme Court in the case of **State Bank of Patiala *versus* Vinesh Kumar Bhasin (1).** In that case, an employee was retired w.e.f. 30.11.2006 by order dated 17.11.2006 after rendering 30

(1) 2010 (4) SCC 368

years of service in accordance with Regulation 19 of the State Bank of Patiala (Officers') Service Regulations 1979 (for brevity 'the 1979 Regulations'). He moved an application for being relieved under the 'Exit Option Scheme'. The application could not be processed and he retired on 30.11.2006. The employee filed two complaints to the Commissioner and Chief Commissioner for persons with disabilities, Dehradun and Delhi respectively for issuance of direction to the Bank to grant him relief under the 'Exit Option Scheme'. He claimed in the complaints that he was in a road accident on 26.05.1997 and as a result he became disabled. He alleged discrimination on the part of the Bank by not accepting his request for retirement under 'Exit Option Scheme' merely because he was a person with disability. The Chief Commissioner Delhi issued a show cause notice to the Bank with a further direction that the decision of the Bank to retire the employee should not be implemented until further orders. Complaining noncompliance of the directions issued by Chief Commissioner the employee approached the Allahabad High Court. On the first date of hearing, the High Court issued ex-parte interim order requiring the Bank to comply with the direction issued by the Chief Commissioner. On non-compliance of the High Court's ex-parte order, the employee filed a contempt petition in which direction was issued to comply with the ex-parte order failing which he was to appear before the Court. Placing reliance on its earlier judgments in the case of **All Indian Overseas Bank SC and ST Employees Welfare Association *versus* Union of India (2),** their Lordships reiterated the principles for grant of mandatory injunction at interim stage in para 20 to 23 of the judgment in Vinesh Kumar Bhasin's case (supra) which read thus:

> 20. A "company" is not "established" under the Companies Act. An incorporated company does not "owe" its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a memorandum of association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a "company" is incorporated and registered under the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself

(2) (1996) 6 SCC 606

establishes the National Company Law Tribunal and the National Company Law Appellate Tribunal, and these two statutory authorities owe their existence to the Companies Act.

21. Where the definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the words "by or under". The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between "established by a Central Act" and "established under a Central Act"?

22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of the State Bank of India Act, 1955 provides that a bank to be called State Bank of India shall be constituted to carry on the business of banking. Section 3 of the Life Insurance Corporation Act, 1956 provides that

"3. Establishment and incorporation of Life Insurance Corporation of India.- (1) With effect from such date as the Central Government may by notification in the Official Gazette, appoint there shall be established a Corporation called the Life Insurance Corporation of India."

23. We may next refer to the State Financial Corporations Act, 1951 which provides for establishment of various financial corporations under that Act. Section 3 of that Act relates to establishment of State Financial Corporations and provides that "the State Government may, by notification in the Official Gazette, establish a financial for the State under such name as may be specified in the notification" and such financial corporation shall be a body corporate by the name notified. Thus, a State Financial Corporation is established under a Central Act. Therefore, when the words "by and under an Act" are preceded by the words "established", it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under

an Act. In short, the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act."

(5) These principles are more pronounced when the High Court has allowed the writ petitioner to run medical college without allowing the Government to file reply. It was despite the fact that the Central Government had rejected grant of such permission after obtaining recommendation from Medical Council twice. The views of their Lordships of Hon'ble the Supreme Court in the case of **Union of India *versus* Era Educational Trust (3)** are discernible from the following paras of the judgment which read thus:

"5. It is unfortunate that the High Court of Allahabad (R.H. Zaidi and Bhanwar Singh, JJ.) exercised the extraordinary jurisdiction under Article 226 of the Constitution of India, in an extraordinary manner by granting interim mandatory relief to run the Medical College, despite the fact that the Central Government has rejected such permission, after obtaining recommendation from the Medical Council twice. The extraordinary powers under Article 226 are to be exercised for rendering justice in accordance with law. The Medical College cannot be established except with the previous sanction of the Central Government as provided under the Indian Medical Council Act, 1956 (102 of 1956). Unfortunately, by granting this interim mandatory order, without allowing the respondents therein time to file a counter affidavit, the Court not only violated the principles of natural justice and has allowed the petition on the date of its admission. It is apparent that on the date when the petition was presented, the Court straight away granted mandatory order permitting Respondent 1 to establish the Medical College. Learned counsel who appeared on behalf of the Union of India sought an adjournment for filing an affidavit-in-reply after obtaining instructions from the department concerned, but the same was refused. This unusual relief was granted in a case where Respondent 1 filed an application for consent of the Central Government to establish the Medical

(3) 2000 (5) SCC 57

College at Lucknow in January. That application was considered, reconsidered and the Medical Council had carried out the inspection twice and finally on 04.06.1999 the application was rejected by the Central Government. In hot haste, in a case where there was no urgency, the High Court by the impugned order dated 11.10.1999 directed that operation of the impugned order dated 4.6.1999 passed by the Central Government shall be stayed and the State of U.P. was directed to allocate the students to the Medical College for the purpose of admission. As such, it is to be stated by granting stay of the order passed by the Central Government it is difficult to hold that would amount to a permission to establish the Medical College.

6. It may be that order XXXIX CPC would not be applicable at the stage of granting interim relief in a petition under Article 226 or 227 of the Constitution, but at the same time various principles laid down under Order XXXIX for granting ad interim or interim reliefs are required to be taken into consideration. In the case of Morgan Stanley Mutual Fund v. Kartick Das after considering the various authorities this Court laid down the guiding principles in relation to grant of an ad interim injunction which are as under: (SCC pp. 241-42, para 36):

"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the Court in the grant of ex parte injunction are-

(a) Whether irreparable or serious mischief will ensue to the plaintiff;

(b) Whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would except a party applying for ex parte injunction to show utmost good faith in making the application;

(f) even if granted, the ex parte injunction would be for a limited period of time;

(g) general principles like prima facie case, balance of connivence and irreparable loss would also be considered by the court."

(6) These principles have been laid down in umpteen judgments which we need not multiply. It is, therefore, suffice to say that ordinarily no mandatory injunction should be issued without affording opportunity to the other side. (**See Rabindra Kumar Shaw *versus* Manick Lal Shaw (4); Inderjeet *versus* Kulbhushan Jain (5).**

(7) When the aforesaid principles are applied to the facts of the present case we are left with no doubt that the mandatory directions issued by the learned Single Judge would not be sustainable and are liable to be set aside.

(8) Mr. Khosla, learned counsel for the appellant has stated that the written statement shall be filed before the learned Single Judge on or before 05.09.2011 as the matter is already fixed for hearing on 09.09.2011.

(9) In view of the above, we set aside the mandatory directions issued in order dated 28.02.2011 and 12.05.2011 with a request to the learned Single Judge to consider the case dispassionately by taking into account the stand of the appellants reflected in the written statement which is to be filed by 05.09.2011. We wish to clarify that the learned Single Judge shall not be influenced by any observations made in this order as we have not expressed any opinion on the merit of the controversy.

(10) Accordingly, the appeal stands disposed of.

J.S. Mehndiratta

(4) (2007) 13 SCC 647

(5) (2009) 15 SCC 79