

Neutral Citation No. - 2023:AHC:200159

RESERVED

Court No. - 5

Case :- WRIT - C No. - 42408 of 2005

Petitioner :- Dewta Deen Yadav

Respondent :- State Of U.P. Thru Presiding Officer And Another

Counsel for Petitioner :- Arvind Kumar, ,Krishanji Khare,Prem Shankar Yadav

Counsel for Respondent :- C.S.C.,P.K.Singh,Ravindra Singh

HON'BLE PIYUSH AGRAWAL,J.

1. Heard learned counsel for the petitioner, learned Additional Chief Standing Counsel for the State – respondents and Shri Ravindra Singh, learned counsel for the respondent no. 2.
2. The instant writ petition has been filed for quashing the impugned award dated 06.04.2004 (published on 18.01.2005) passed by the Presiding Officer, Industrial Tribunal, Meerut in Adjudication Case No. 21 of 1999, to the extent it deprives the petitioner from reinstatement and back wages.
3. Brief facts of the case are that the respondent no. 2 – Nehru Netra Chikitsalaya, Muzaffarnagar has been established for rendering charitable work by the Eye Relief Society, which is duly registered under the Societies Registration Act. The State Government has recognized the said Hospital as the base hospital for charitable public institution to conduct eye camp and other voluntary work in urban as well as rural areas. The said hospital is exclusively run on the contribution given by the Cane Cooperative Society. The main object of the respondent – Society is to provide free treatment to poor patient. Vide resolution dated 14.04.1976, the Governing Body of the Society resolved that the District Magistrate and District Cane Officer, Muzaffarnagar will hold the post of President and General Secretary, respectively.

On account of poor financial condition of the Hospital, it was decided to retrench its employees.

4. In view of the said fact, the petitioner, who was appointed as Clerk on ad hoc basis on 21.04.1981, was removed vide order dated 14.05.1997, against which a reference was made vide order dated 01.02.1999 and thereafter, the impugned award dated 18.01.2005 has been passed.
5. Learned counsel for the petitioner submits that the petitioner was appointed as a regular employee and his services were terminated in gross violation of the provisions of sections 6-N, 6-P & 6-Q of the Industrial Disputes Act. He further submits that the petitioner has been retrenched illegally on the ground of poor financial condition of the respondent no. 2; whereas, the employees junior to him are still working. He further submits that the Tribunal, without considering the material on record, has passed the impugned award. In support of this submission, he has placed reliance on the judgement of the Apex Court in ***Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat*** [2022 (4) ESC 846 SC]. He prays for allowing the writ petition.
6. Per contra, learned counsel for the respondent no. 2 submits that the respondent no. 2 is a charitable organization and having less than 20 staff. Its object is only to help the poor patient on charity basis and therefore, the Society, being a registered Society, is discharging the services of charity and do not come under the provisions of Industrial Disputes Act as having less than 20 staff. He further submits that since there was a serious financial crisis, therefore, it was decided to retrench its employees and the petitioner, being not a regular employee, has rightly been retrenched. He further submits that it is incorrect on the part of the petitioner to submit that juniors working in the category of the petitioner are still working. The employees, who are working,

may be juniors to the petitioner, but are of different category. He prays for dismissal of the writ petition.

7. After hearing learned counsel for the parties, the Court has perused the record.
8. It is admitted fact that the respondent no. 2 is run by a registered Society and discharging its services to poor patient on charity basis. On the basis of the poor financial condition, it was decided to retrench the employees as per the work formula. The petitioner has not brought on record any material, either before the court below or even in the present writ petition, about the category in which he was working and the juniors to him are still working belongs to the same category. If the category of the employees working with the respondent no. 2 are different from the category he has been retrenched, the submission made by the learned counsel for the petitioner is misconceived. The petitioner can only claim his right if the juniors to him are working on the same category, i.e., Clerk. The judgement relied upon by the learned counsel for the petitioner will be of no help to him in the peculiar facts & circumstances of the present case as the petitioner was unable to disclose that he was working on the same post.
9. In view of the aforesaid facts & circumstances of the case, no interference is called for in the impugned award by this Court. The writ petition fails and it is hereby dismissed.

Order Date :- 17/10/2023

Amit Mishra