

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : July 09, 2015*

+ **LPA 350/2014**

DIRECTORATE OF ADULT EDUCATION Appellant
Represented by: Mr.Anil Soni, Mr.Naginder,
Advvs.

versus

BIRENDER KUMAR & ORS Respondent
Represented by: Mr.Varun Prasad, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 7883/2014

For the reasons stated in the application 267 days delay in filing the appeal is condoned.

LPA 350/2014

1. Vide the award dated March 24, 2008 the Labour Court held that termination of services of respondents Birender Kumar, Munish Sharma and Kuldeep Singh casual labourers with effect from September 17, 2002 was neither just nor fair nor legal and thus they were directed to be reinstated and regularized with 25% back wages. Against the said award the appellant preferred a writ petition being W.P.(C) 6360/2008 which was disposed of by the impugned order with the following directions:

“(i) The award of regularization of the respondent – workmen’s services is set aside.

(ii) The award of reinstatement of the respondents in service

is upheld. The respondents shall report for duty at the place of their last engagement to the officer holding the same designation under whom they were last serving within ten days of this decision and their attendance shall be marked and work shall be taken from them as daily wagers. The respondents shall be paid wages for the service that they may render henceforth equivalent to their contemporaries, who had been engaged with them in 1992 and 1994 respectively. The petitioner shall comply with Section 25-G and 25-H of the Act.

(iii) Each of the respondent workmen shall be entitled to lump sum compensation of ₹25,000/- in lieu of back wages to be paid to them within four weeks of this judgment.

(iv) The cases of the respondents shall be considered for regularization in terms of the policy/scheme framed for the aid purpose by the petitioner. For that purpose the respondents shall be treated as in continuous service as daily wagers from the date of their retrenchment and their seniority shall be computed accordingly from the dates of their initial engagement.

(v) Each of the respondents shall be entitled to Costs quantified at ₹10,000/-.”

2. The grievance of the appellant in the present appeal is two-fold that firstly it is not an “Industry” and thus provisions of Industrial Disputes Act 1947 (in short the ID Act) would not apply to it and secondly in any case no directions for reinstatement with lump-sum compensation and directions to consider the case for regularization could have been passed as directed by the learned Single Judge.

3. To canvas its case on the point that it is not an industry learned counsel for the appellant relies upon the decision in (1997) 4 SCC 391 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors. It is submitted that the appellant is subordinate office under direct control of Department of

School Education and Literacy, Ministry of Human Resource Development, Government of India functioning as a National Resource Centre for Adult education programmes. The directorate of adult education functions with the objective of National Literacy Mission and has nine specialized units i.e. Advertising & Publicity, Monitoring, Research & Evaluation, State Resource Centres, Jan Shikshan Sansthan, Publication, Training, Rajbhasha Hindi, Library and Administration & Accounts. The respondents were working as Peons in the Administrative Department of the appellant/directorate and since the appellant does not engage in production of goods/services it is not an industry and performs functions in the nature of public welfare which are sovereign in nature.

4. The learned Single Judge relying upon the decision in AIR 1978 SC 548 Bangalore Water Supply & Sewerage Board Vs. A. Rajappa and Ors. held that the decisive test is not whether the petitioner is undertaking these activities out of a sense of public welfare, but whether there exists a method of working that emerges from an organized venture between employers and employees. The petitioner, no doubt, does much good to the society by promoting adult education but the same cannot be done without a systematic workforce engaged by the petitioner to meet its objectives. It is held that public welfare activities are not exempt from coverage under Section 2(j) of the ID Act and applying the dominant nature test the appellant would be covered in the definition of an industry.

5. The fact that the respondents had worked for more than 240 days during the term of engagement up to September 17, 2002 was not disputed and thus in view of the settled legal position the learned Single Judge directed reinstatement in service with back wages for 25%. However, in

view of the decision in (2006) 4 SCC 1 Secretary, State of Karnataka & Ors. Vs. Umadevi and Ors., the directions to regularize passed by the learned Labour Court were set aside; however it was directed that in terms of the policy or schemes framed by the appellants the case of the respondents would be considered for regularization.

6. Learned counsel for the appellant before this Court re-agitates the issue raised before the learned Single Judge. In Himanshu Kumar Vidyarthi (supra) the Supreme Court held that every department of Government cannot be treated as an industry and when the appointments are for regulations by statutory rules, the concept of industry to that extent stands excluded. Admittedly, in the present case the appointments of the respondents were not as per statutory rules. Further in Himanshu Kumar Vidyarthi (supra) the Supreme Court did not consider the Constitution bench judgment in Bangalore Water Supply (supra) and held that since the respondents therein were daily wages employees they had no right to the post and their disengagement was not arbitrary. A perusal of the judgement in Himanshu Kumar Vidyarthi would reveal that the same was decided on the peculiar facts of the case while dealing with a cooperative training institute which was held not to be treated as industry.

7. In Bangalore Water Supply (supra) the Supreme Court held that the word “industry” as defined in Section 2(j) of the ID Act has a wide import; where there is (i) systematic activity, (ii) organized by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an “industry” in that enterprise. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other

sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Although Section 2(j) ID Act used the words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-reach itself.

8. Considering the nature of activity of the appellant we find no reason to take a view different than the one taken by the learned Single Judge on this count.

9. The appellants have not denied that the respondents worked continuously for more than 240 days during the term of their engagement up to September 17, 2002 and that their retrenchment has not been done in accordance with Section 25-F of the ID Act. For the reason that the respondents had worked for 8/10 years prior to their disengagement the learned Single Judge held that it was a case where reinstatement was justified and compensation in lieu of reinstatement would not meet the ends of justice in view of the length of service provided by the respondents to the appellant.

10. In the decision reported as (2009) 15 SCC 327 Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Anr. the Supreme Court noted that the earlier view articulated in many decisions of the Supreme Court reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases the consistent view taken was that the relief of reinstatement with back wages cannot be automatic and may be

fully inappropriate in a given situation even though the termination of an employee is in contravention of Section 25-F of the ID Act. The Supreme Court laid down that whether reinstatement should be granted or compensation would depend upon the facts of each case depending on a number of factors, inter alia, manner and method of appointment, nature of employment and length of service.

11. In the present case as noted above the respondents were in service for nearly 10 years. The nature of employment was not seasonal and hence no illegality can be attributed to the judgment of the learned Single Judge directing reinstatement with a lump-sum compensation of ₹25,000/-. Appeal is dismissed.

CM 7882/2014 (stay)

Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 09, 2015
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