

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.26593 OF 2003

ORDER

This writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with the Award dated 30.06.2003 passed in I.D.No.79 of 2001 by the Industrial Tribunal-I, Hyderabad and to quash or set aside the same by holding it as arbitrary and illegal.

Heard Smt G.Sudha, learned counsel appearing for the petitioner, learned Government Pleader for Labour appearing for the 1st respondent and Sri Toom Bal Reddy, learned counsel appearing for the 2nd respondent-workman.

It is the case of the petitioner that it is one of the institutions of Andhra Mahila Sabha, which a Trust, registered under the Indian Societies Registration Act. The petitioner institution is one of the reputed and well established hospital catering to the needs of the poor and middle sections of the society. In order to carry on the hospital activities, it engaged the 2nd respondent-workman as Lift Operator on 1.7.1996, on casual basis, and his services were intermittently engaged now and then. Thereafter, 2nd respondent was disengaged with effect from 5.5.1999. The 2nd respondent-workman had filed I.D.No.79 of 2001 before the Industrial Tribunal-I, Hyderabad, complaining that he was illegally disengaged,

whereas his juniors were continued and their services were regularized. The Tribunal vide Award dated 30-06-2003 had allowed the ID preferred by the 2nd respondent-workman and set aside the oral termination dated 5.5.1999 and directed the petitioner to reinstate the 2nd respondent into service within a month and regularize his service subject to fulfillment of the condition of eligibility, qualifications with relaxation of age prescribed under the rule with full back wages. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner contends that the 2nd respondent-workman was engaged on casual basis and whenever a casual employee disengaged or terminated, it does not amount to termination and such disengagement of casual worker will not attract Section 2-A (2) of the Industrial Disputes Act (for short 'the Act'); that the 2nd respondent-workman ought not to have invoked Section 2-A of the Act; In support of his contention he placed reliance on the judgment of the Apex Court in *Himanshu Kumar Vidyarthi and others and State of Bihar and others*¹, wherein it was held as under:

“The admitted position is that the petitioner No.1 came to be appointed as Assistant, petitioner No.2 as Driver and petitioner Nos.3 to 5 as Peons on different dates, viz., on August 1, 1988, November, 10, 1989, May 31, 1987 and April 22, 1992. They were appointed in the Co-operative Training Institute, Deoghar by its Principal. They are admittedly daily wage employees. Their services came to be terminated by the Principal. Calling that

¹ 1997(76) 237

termination in question, they filed a writ petition in the High Court. The main grievance of the petitioners before us is that termination of their services is in violation of Section 25F of the Industrial Disputes Act, 1947. The question for consideration, therefore, is: whether the petitioners can be said to have been 'retrenched' within the meaning of Section 25-F of the Industrial Disputes Act? Every Department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment", therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."

Learned counsel further submits that while admitting the writ petition on 23.12.2003, this Court granted interim stay of the Award, except to the extent of reinstatement and payment of 25% of back wages; that aggrieved by the same, the petitioner has filed W.A.No.164 of 2004 before Division Bench of this Court and the Division Bench while disposing of the writ appeal on 3.2.2004, passed the following order:

"We are of the firm view that engagement of respondent-workman was only as casual labourer and there was no force that there could be any regularization. Accordingly, we allow the appeal, set aside the impugned order and allow WPMP No.33670 of 2003 thereby staying the impugned award, subject, of course, to the respondent-workman applying for vacation of the order. As and

when the vacate petition is filed, the same shall be dealt with in accordance with law. No costs.”

Learned counsel further submits that by virtue of the said order in the writ appeal, the finding of the Tribunal directing the petitioner to regularize the services of the 2nd respondent-workman does not arise and that appropriate orders be passed by setting aside the order passed by the Tribunal and allow the writ petition.

Learned counsel appearing for the 2nd respondent workman contends that the 2nd respondent-workman was engaged as Lift Operator on 1.7.1996 and he was worked to the best satisfaction of the petitioner without any complaints. He further contends that the petitioner has continued the services of his juniors viz., Dhanjaya and Raghupati and regularized their services also, but disengaged the services of the 2nd respondent without following the provisions under Section 25-F of the Act and without considering his case for regularization. He also contends that the 2nd respondent-workman has specifically pleaded before the Tribunal and also lead evidence to the effect that he has completed 240 days in each of the year from 1996; that whenever any workman completes 240 days whether it is casual basis or daily wage basis, the employer is bound to follow the procedure as envisaged under Section 25-F of the Act; that no procedure

was followed; that disengagement of the 2nd respondent-workman is arbitrary and illegal; and that the Tribunal has rightly passed the Award in favour of the workman and that no interference is called for from this Court.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the Tribunal has rightly passed the Award in favour of the 2nd respondent-workman. Since the 2nd respondent-workman has specifically pleaded that his juniors were continued in service and their services were also regularized, in order to do complete justice, the Tribunal had directed the petitioner to reinstate the 2nd respondent-workman into service by setting aside the oral termination dated 5.5.1999. The Tribunal has no power to direct the petitioner to regularize the services of the 2nd respondent-workman and only to that limited extent, the Tribunal erred in giving such a direction. In respect of other aspects, such as setting aside the order of termination and directing reinstatement of the workman into service are all well within its power.

Accordingly, the Writ Petition is disposed of. The Award passed by the Tribunal to the extent of directing the petitioner to regularize the services of the 2nd respondent-workman is set aside and rest of the Award dated 30.06.2003

passed by the Tribunal in I.D.No.79 of 2001 is upheld. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

11th December, 2018
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