

MICROWAVE PROJECT, KOTA AND ANR.

v.

RAMESH CHAND

JULY 18, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Industrial Disputes Act, 1947:

ss. 25-F and 2(oo)(bb)—Casual labourer appointed for specific project and on completion of work relieved from job—Tribunal and High Court held that his termination was bad as there was violation of mandatory requirement of s.25-F—On appeal, held: Question of applicability of s. 25-F dependent upon the basic question relating to applicability of s. 2(oo)(bb)—That aspect lost sight of—Matter remitted to tribunal.

The respondent was engaged as a casual labourer for a specific project by the appellants. After completion of the work and commissioning of the project, respondent was relieved from his job. The office of the appellants was also abolished as there was no need of work. Respondent raised dispute challenging his termination.

The Industrial Tribunal held that since the respondent worked for 240 days in the establishment of the appellant, his termination was bad as there was violation of the mandatory requirements of s. 25-F of the Industrial Disputes Act. Removal from service amounted to retrenchment under s. 2(oo) and ordered reinstatement with 30% back wages. High Court upheld the order. Hence the present appeal.

Allowing the appeal and remitting the matter to the tribunal, the Court

HELD: The Tribunal failed to consider the issue in proper perspective. The effect of s. 2(oo)(bb) of the Industrial Disputes Act, 1947 has been completely lost sight of. There was no dispute that the employment was for a specific project. There was no discussion of the various materials produced before the Tribunal. The orders of the High Court proceeded on the basis that because there was non-compliance with the requirement of s. 25-F, the Award was justified. The question of the applicability of s. 25-F of the Act would be dependent upon the basic question relating to applicability of

A s.2(oo)(bb) of the Act. That aspect has been lost sight of. [Para 6] [405-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2851 of 2005.

B From the Judgment & Order dated 04.02.2004 of the High Court of Judicature for Rajasthan, Bench at Jaipur in D.B. Special Appeal (Writ) No. 194 of 2000 with D.B. Civil Misc. Stay Application No. 1155 of 2000 in S.B. Civil Writ Petition No. 4276 of 1999.

V.K. Shukla, A.K. Tripathi and K.K. Mohan for the Appellants.

Ajay Choudhary for the Respondent.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a Division Bench of the Rajasthan High Court, Jaipur Bench, dismissing the special leave filed by the appellant.

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2. Background facts in a nutshell are as follows:

E Respondent was engaged as a casual labourer by the Assistant Engineer of the Microwave Project Borabas for the job of fixing of nuts and bolts in the Microwave Tower. After completion of the work and commissioning of the Microwave Towers, respondent was relieved from his job on 1.12.1987. Office of the Microwave, Kota, was also abolished as there was no need of work and in any event it was only of casual nature. Respondent raised a dispute to the effect that there was termination of his services which is illegal. The Labour Ministry, Govt. of India vide order dated 30.9.1991 referred the following dispute under Section 10(1) of the Industrial Disputes Act, 1947 (in short the 'Act') to the Industrial Tribunal (Central) Kota, Rajasthan.

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G "Whether the action of the AEN Microwave Project, Kota & LET, Jaipur in terminating the services of Shri Ramesh Chand, S/o Shri Jankidas, Casual Labour under AEN Microwave Project, Kota at Lawatbhata w.e.f. 1.12.1987 is justified? If not, to what relief the concerned workman is entitled?"

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H 3. On behalf of the applicant it was pleaded that he had been engaged as casual labourer on 8.12.1986 and, therefore, he having worked for more than 240 days in 12 calendar months could not have been terminated. The appellant took the stand that the respondent was engaged for doing a particular

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work on a casual labour basis. Since the establishment itself was closed after completion of the work there was no scope for accepting the prayer of the respondent. The Tribunal held that since the respondent worked for 240 days in the establishment of the present appellant, his termination will be bad as there was violation of the mandatory requirements of Section 25-F of the Act. Removal from service amounted to retrenchment under Section 2(oo) of the Act. With these conclusions it was held that the respondent was entitled to be re-employed to continue to be in service along with the 30% back wages. A writ petition was filed before the High Court. A learned Single Judge by a very cryptic order held that the Labour Court has held that there was violation of the requirements of Section 25-F of the Act and, therefore, there was no legality. The Division Bench came to the similar conclusions.

4. In support of the appeal learned counsel for the appellant submitted that there is no dispute that the engagement was for a specific project. The Tribunal has categorically noted about these aspects but granted relief to the respondent. It was noted that the office of the present appellant was under the Jaipur Division and the new Kota Division has been created after bifurcation of the Division.

5. In response, learned counsel for the respondent submitted that it should be accepted that the project has been completed, yet in view of the fact that there was bifurcation, the Tribunal was justified in its conclusion.

6. We find that the Tribunal failed to consider the issues in proper perspective. The effect of Section 2(oo)(bb) has been completely lost sight of. There was no dispute that the employment was for a specific project. There was no discussion of the various materials produced before the Tribunal. The orders of the High Court proceeded on the basis that because there was non-compliance with the requirements of Section 25-F, the Award was justified. The question of the applicability of Section 25-F of the Act would be dependent upon the basic question relating to applicability of Section 2(oo)(bb) of the Act. That aspect has been lost sight of. We, therefore, think it appropriate to remit the matter to the Tribunal for fresh consideration. Parties will be permitted to place material in support of their respective stand. As the matter is pending since long, we request the Tribunal to dispose of the matter within a period of four months from the date of receipt of the copy of this judgment.

7. Appeal is allowed with no orders as to costs.

D.G.

Appeal allowed.