

State of Rajasthan and Others

Vs

Rameshwar Lal Gahlot

Civil Appeal No. 12056 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

14.12.1995

ORDER

1. Leave granted.
2. We have heard the counsel for both the parties. This appeal by special leave arises from the order of the Division Bench of the Rajasthan High Court in Civil Special Appeal No. 292 of 1992 dated 26-4-1994.
3. The undisputed facts are that respondent was appointed for a period of three months or till the regularly selected candidate assumes office. He was appointed on 28-1-1988 and his appointment came to be terminated on 19-11-1988. When the write petition was filed, the learned Single Judge held that since he had completed more than 240 days, the termination is in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') and directed to make fresh appointment of the respondent. When appeal was filed against the latter part of the order, the Division Bench set aside the latter part of the order and directed reinstatement with back wages. As against the order altered by the Division Bench, the present appeal came to be filed.
4. The controversy now stands concluded by a judgment of this Court reported in *M. Venugopal v. Divisional Manager, LIC*. Therein this Court had held that once an appointment is for a fixed period, Section 25-F does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It is contended for the respondent that since the order of the learned Single Judge was not challenged, the termination became final. Consequently, the appellant would be liable to pay back wages on reinstatement. In our considered view, the opinion expressed by the learned Single Judge as well as Division Bench are incorrect in law. When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned Single Judge nor the Division Bench recorded any finding in this behalf. Therefore, where the termination is in terms of letter of appointment saved by clause (bb), neither reinstatement or fresh appointment could be made. Since the appellant has not filed any appeal against the order of the learned Single Judge and respondent came to be appointed afresh on 27-6-1992, he would continue in service, till the regular incumbent assumes office as originally ordered.
5. The question then is whether the respondent is entitled to payment of back wages. Since the order is found to be in terms of letter of appointment, respondent is not entitled to back wages. The

Division Bench was incorrect in directing payment of back wages.

6. The appeal is allowed to the extent indicated above. No costs.