SUPREME COURT OF INDIA

Rajasthan Adult Education Association

Vs.

Kumari Ashoka Bhatacharya

(S V Manohar and D Wadhwa JJ.)

01.12.1997

JUDGMENT

D.P. WADHWA, J.

Appellant is aggrieved by the judgment dated August 4, 19095 of the Division Bench of the Rajasthan High Court dismissing its appeal filed against the judgment dated March 10, 1992 of the learned single Judge allowing the writ petition of the respondent. The respondent in her writ petition had challenged the order dated May 1, 1989 of the appellant terminating her services after giving her one month's notice. The appellant is a society registered under the Societies Registration Act. It was established with the main object of creating atmosphere for adult education which includes imparting education for women in rural parts of the State of Rajasthan. The respondent was appointed temporarily as Programme Assistant in district IDARAS (Information Development And Resource Agency) by letter dated November 9, 1987. Her appointment was for a period of three months on a consolidated salary of Rs. 1200/- per month. Her appointment was extended for a further period of six months from March 1, 1988. By letter dated March 11, 1989 the respondent was informed that her services were not upto the mark and deficiencies in her service were pointed out after evaluation of her work. The respondent was told the need for her for putting serious efforts and to learn the sponsored subject. She was given one more opportunity to show improvement in her work and period of her services was again extended from January 30 to April 30, 1989. By letter dated May 1, 1989 the respondent was told that her services were not required and these were terminated. She was given one moths' notice. Her employment thus ceased on May 31, 1989. Respondent in her writ petition filed against the order terminating her services as temporary

programme Assistant was challenged principally on the ground that the order was passed without complying with the provision of Section 25F of the Industrial Disputes Act, 1947. Notice being issued to the appellant to show cause as to why the writ petition he not admitted and disposed of it was submitted by the appellant that writ petition was not maintainable as the appellant was not a `State' within the meaning of Article 12 of the Constitution and that it was also not an `industry' coming within the purview of the Industrial Disputes Act. Learned single Judge who allowed the writ petition held that the appellant was a State and that in any case before terminating her services the respondent should have been given an opportunity to explain her conduct. He observed that "even if Article 311 is not applicable, services of the petitioner could not have been terminated or dispensed with, without giving a reasonable opportunity as is required by the fundamental principles of natural justice. An employee cannot be condemned unheard, without giving an opportunity to show cause and that was not done in the present case". The Division Bench in appeal against the judgment of the learned single Judge did not consider the merit of the case of its own and by the impugned judgment merely observed that there was no reason to interfere with the judgment of the learned single Judge allowing the writ petition and setting aside the order of termination of services of the respondent.

We do not think High Court has examined the issue involved in the case in its proper perspective. The respondent was not holding any regular appointment with the appellant. She was employed for a particularproject. At the most she was on probation during the period of her appointment. she was told to show improvement in her work. Not only that she was told so in writing by letter dated March 11, 1989 but the matter was discussed with her on other occasions as well. When the appellant found that the work of the respondent was not upto the mark and she was not showing any improvement during her probation period, her services were dispensed with. Her employment was purely temporary. Letter terminating her services does not cast any stigma on the respondent. Termination of her services was not by way of any punishment. It was a termination simpliciter. The appellant was within its right to terminate the temporary employment of the respondent. We accordingly set aside the impugned judgment of the Division Bench dated August 4, 1995 as well as that of the learned single Judge dated March 10, 1992. In this view of the matter, it is not necessary for us to go into the wider question if the appellant is a State amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

The appeal is allowed but without costs.