

SUPREME COURT OF INDIA

Air India Ltd.

Vs.

Dharmender Kumar

(S. R. Babu and D.P. Mohapatra JJ.)

21.09.2000

ORDER

1. A writ petition was filed by the respondent in the High Court seeking for a declaration that the contemplated action of the appellant before us in terminating the service of the respondent on January 27, 1996 or on any other subsequent date thereto is illegal and to prohibit the appellant from taking such action.

The learned single Judge declined to entertain that petition observing that the appropriate course for the respondent would be to work out his rights in an alternative proceeding. Thereupon, an appeal was preferred. In the appeal while issuing notice an interim relief was granted in the following terms:

Notice for April 24, 1996. Meanwhile, we direct that appellant's service be not terminated except on disciplinary proceedings or if the workload is not enough, the principle of "last to come first to go" should be followed. The appellant should be continued only in accordance with the scheme, if any, followed by the respondent.

2. Subsequently, the Division Bench of the High Court disposed of the matter by stating that the interim order granted by it should be final order in the appeal as well. The appellant preferred a review petition against his order, unsuccessfully. Hence, these two appeals are filed by special leave.

3. The High Court on February 29, 1996 granted a relief which could not ordinarily be granted by any Court so as to injunct an employer from terminating the services of an employee and if it should be, the manner in which it could be done. However, an observation was also made that he should be continued only in accordance with the scheme if any, followed by the appellant. If under the scheme his services could not be absorbed and the same has to be discontinued, then what the position would be is not clear from the order. Latter part of the order made by the High Court appears to be inconsistent with the earlier part. We find hardly any reasons were set out in the course of the order as to why such a relief should be granted to the respondent. From the facts available on record we may notice that appellant was employed on November 8, 1995 and it appears he actually worked for 53 days though there is dispute on this aspect and it is urged on the other side that he continued in service till January 27, 1996 and thereafter under the interim orders of the High Court till the same stood stayed by this Court which was given effect to from December 24, 1997. Thus the respondent has not obtained any legal right to be continued in service, much less had he worked for a long period. We fail to understand as to how the High Court could have passed an interim order, much

less a final order, in matters of service which ultimately would upset the scheme of recruitment itself, restraining the appellant from terminating the services when the term of employment had come to an end. In the circumstances, we set aside the order i made by the High Court. However, it is made clear that if any scheme is being worked out by the appellant and the respondent could be fitted in, he could be accommodated if he makes a claim for the same. The appeals shall stand i allowed accordingly. In the circumstances, there shall be no order as to costs.