SUPREME COURT OF INDIA

Messrs Indian Drugs and Pharmaceuticals Limited

Vs

Devki Devi and Others

Appeal (Civil) 2992-3004 of 2003

(Arijit Pasayat and Tarun Chatterjee, JJ)

05.07.2006

JUDGMENT

ARIJIT PASAYAT, J.

These appeals involve identical issues and are, therefore, disposed of by this common judgment.

Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Uttaranchal High Court. Several writ petitions were filed by the appellant questioning correctness of the award dated 23.12.1999 holding that respondent No.2 in the writ petitions (respondent No.1 in each of these appeals) were entitled to re-instatement and compensation of Rs.5, 000/- with litigation expenses of Rs.500/- each. It was held by the Labour Court that there was clear violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (in short the 'Act') as cessation of their work amounted to retrenchment which was in violation of the aforesaid provision.

Background facts in a nutshell are as follows:

M/s Indian Drugs & Pharmaceuticals Limited (for short IDPL), the appellant, is a public undertaking fully owned and controlled by the Government of India. It has one of its units at Virbhadra, Rishikesh, District Dehradun. Several workers of the unit died in harness leaving behind the widows and families. The IDPL Workers' Union took up their cause and other disputes in a

meeting held on 12.8.1988. In the said meeting as item No.3 the Union demanded that the widows/dependants of deceased employees should be given employment in the plant. Till such time the decision for their employment is received from the corporate office, the management should employ them as contract labour. The management agreed to consider the Union's suggestion sympathetically.

However, appellant decided to give work to them on contract basis by appointing them as contractor for maintenance of office records, cleaning and mopping of floors etc. on a consolidated amount. As contractors they were liable to pay provident fund and other statutory liabilities for the labourers engaged by them to carry out the contracts. The respondents were appointed as contractors from time to time. After the meeting which was held on 12.8.1988 the Head Office vide letter dated 27.5.1998 took a decision that contract labour arrangement should cease. It was also decided that in view of financial stringencies it has been decided to dispense with system forthwith and existing contractual agreements were to be reviewed.

With effect from 1.8.1998 contracts with the respondents were terminated. Respondents raised industrial dispute which was referred to the Labour Court U.P. Dehradun who gave the award against the appellant-company on the ground that the said respondents were the workmen and they were entitled to be regularized. It applied the principle of lifting the veil of contract to find out the correct position.

Against the said order, the appellant-company filed Writ Petitions which were dismissed on the ground that the minutes of the meeting dated 12.8.1988 was a settlement between the parties in terms of Section 2(p) of the Industrial Disputes Act, 1947 (in short the 'ID Act') read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 (in short the 'Central Rules'). High Court recorded a finding that the settlement between the employer and employees acquired a statutory status, as a result of which the job contractors cannot be said to be contract labourers. In fact they are workmen in view of their engagement. Therefore, the respondents cannot be said to be contract labourers but were in reality workmen.

It was noted by the High Court that there was settlement arrived at between the management of the Rishikesh Unit of the appellant-company and the office bearers of the Union and since the respondent in each appeal was given employment in furtherance of the policy of the appellant-company, they were workmen. The High Court noted that the employment was given to the dependants/widows of the workmen who had died in harness. Since the engagement was pursuant to a settlement in terms of Section 2(p) of the ID Act, it was binding on the parties to the agreement in terms of Section 18(1) of the ID Act. It was noted that the Memorandum of Settlement was arrived at in terms of Rule 58 of the Central Rules. What was projected by the appellant, according to the High Court, as job contract is nothing but employment given under dying in harness scheme. Accordingly, the Labour Court's award was upheld.

In support of the appeals, learned counsel for the appellant submitted that the Labour Court and the High Court have clearly lost sight of various relevant factors. The appellant is a sick company and is before Board of Industrial and Financial Reconstruction (in short 'BIFR') since 1992. There is no

rule or scheme for providing appointment on compassionate ground. The appellant has never employed the concerned respondents on compassionate ground and in any event the company was not in a position to employ such persons. The bleak financial position of the company has been considered by this Court in Officers & Supervisors of IDPL v. Chairman & M.D., IDPL and Ors. 2003 (6) SCC 490. Originally more than 6500 employees were employed and out of them 6171 have taken retirement and only 421 employees are working throughout the country. The appellant-company is not functional and is trying to further reduce the number of employees. In the absence of any rule or scheme for compassionate employment, no direction could have been given by the Labour Court and the High Court erroneously held that there was a settlement arrived at. The Minutes of the meeting dated 12.8.1988 clearly show that there was no settlement. On the other hand, the minutes show that only demands of the Union and the agreement of the management to consider the suggestions sympathetically were accorded. This cannot by any stretch of imagination be considered a Memorandum of Settlement in terms of Section 2(p) of the ID Act or Rule 58 of the Central Rules. The Labour Court erroneously held that the labour contract given was in fact not a contract but an appointment of the respondents as workmen. The language of the contract is clear and unambiguous.

In response, in the counter affidavit and the notes of submissions it has been mentioned by learned counsel for the respondents that the orders of the Labour Court and the High Court do not warrant interference. It is stated that though contracts were purportedly entered into for all practical purposes, the respondents were detained as employees by the appellant-company.

The undisputed position is that the appellant-company does not have any rule or scheme for compassionate appointment.

As was observed in State of Haryana and Ors. v. Rani Devi & Anr. 9, it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased-employee. In Rani Devi's case (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr. 3, it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. , that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden

financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

In Smt. Sushma Gosain and Ors. v. Union of India and Ors. , it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati (Smt.) v. Union of India and Ors. , and Union of India and Ors. v. Bhagwan Singh 9. In Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. , it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased-employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

In State of U.P. and Ors. v. Paras Nath 2, it was held that the purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments. The above position was highlighted in Commissioner of Public Instructions and Ors. v. K.R. Vishwanath .

Additionally, in Officers and Supervisors of IDPL's case (supra) the financial condition of the appellant company had been noted in detail. No production is going on in the company since 1994. These are factors which have been completely lost sight of by the Labour Court and the High Court. Both the Labour Court and the High Court held that there was a settlement arrived at in the meeting dated 12.8.1988. On bare reading of the minutes of the meeting it is clear that there was in fact no settlement. The relevant portion reads as follows:

"The Union demanded that the widows/dependants of deceased employees should be given employment in the plant as was done earlier. They have written several letters in this regard but no fruitful result has come out. The widows/dependants are waiting for employment for the last 2 years and are at the verge of starvation. Till such time, the decision for their employment is received from the corporation office, the management should employ them as contract labour so that they may

earn their bread and avoid starvation. Further, the management should ensure payment of minimum wages. The number of such needy widows/dependants of deceased employees is about thirteen.

The management agreed to consider the Union suggestion sympathetically. On the request of Union the Management informed that this will be done in a week's time."

To provide sustenance to the family members of the deceased workmen certain job works were given. The agreements have been placed on record. The cost of the contract, the nature of the work and the time allowed have been clearly indicated in each of the contracts. It also clearly indicates the number of persons who are to be engaged for carrying out the job contract work. There was no material before the Labour Court to conclude that the contract was not a job contract and in fact employment had been given. There is no foundation for such a conclusion.

Above being the position, the Labour Court and the High Court were not justified in holding that the respondent in each case was a workman and/or that there was retrenchment involved. The award of the Labour Court and the judgment of the High Court are therefore set aside

The appeals are allowed but with no order as to costs.

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