SUPREME COURT OF INDIA

District Programme Co-Ordinator, Mahila Samkhya

Vs.

Abdul Kareem

C.A.NO. 5815 OF 2008 arising out of SLP(C) No. 17820/2006

(S.B. Sinha and Cyriac Joseph)

18/09/2008

ORDER

Delay condoned.

Leave granted.

Mahila Samkhya, Karnataka, is a society registered under the Karnataka Societies Registration Act, 1960. This society is engaged in various activities, like encouraging, assisting, promoting, decision making and encouraging group action by women as means of their empowerment and equal participation in the process to bring about social changes and to empower the women. The activities of the said society is being carried out in the districts of Gulbarga, Bidar, Raichur, Bijapur, Bellary, Koppal and Mysore in the State of Karnataka. It has been receiving funds from the Government of Netherlands for the aforementioned activities.

The services of respondent No.1 herein as a driver were hired by the appellants. He was initially appointed in the year 1992 on fixed tenure basis. On or about 20th October, 1997, his services were again hired inter alia for the period 1.11.1997 to 31.10.1999. Appellants were, however, entitled to terminate his services with 30 days notice on either side or by payment of compensation of one month's honorarium in lieu of notice.

It is now not much in dispute that some acts of omission and commission on the part of the 1st respondent were brought to the notice of the authorities of the Society and some purported oral enquiry was conducted at Bangalore in connection with some vehicle bearing No. KA-39 M-42.

By reason of a letter dated 3rd July, 1998, however, the services of respondent No.1 were terminated in terms of para 14 of the offer of appointment, stating:

"Vide the above referred letter, you were appointed as a driver in MSK, Gulbarga as per the terms and conditions mentioned therein. In accordance with para XIV of your appointment letter, your services are no longer required in this organization and hence your services are terminated with immediate effect, i.e. with effect from 3.7.98 with one month notice in lieu of which you are being paid one month's honorarium."

An industrial dispute was raised by the 1st respondent before the Labour Court at Gulbarga. Both the parties adduced their respective evidences before the Presiding Officer, Labour Court. Having regard to the deposition of Ms. Jyothi Kulkarni examined on behalf of the appellants as NW-1, the Labour Court opined:

"The main contention of the 2nd party is that the termination of the workman 1st party was only a termination simplicitor and the same cannot be disturbed by the Court. In this case the 2nd party has produced the letter dt. 3.7.98. Of course the said letter shows that the appointment was only temporary in nature. This statement as reflected in the letter cannot be accepted. In fact the 1st party has produced before the court the letter issued by the establishment. The said letter issued by the officials of the 2nd party marked as W1 clearly indicates that the service of 1st party was terminated not on account of temporary work but it was due to the fact that the same was not proper."

Holding that as no disciplinary enquiry was conducted, the termination order dated 3.7.1998 was illegal, an award of reinstatement in service with full back wages was made. Aggrieved by and dissatisfied with the said award the appellants filed writ petition in the High Court. The High Court while upholding the award of reinstatement in service reduced the back-wages to 30 per cent. Appellants are, thus, before us.

Mr. Nath, learned counsel for the appellants would submit that the Labour Court and consequently the High committed a serious illegality in passing the impugned award and the judgment, in so far as they failed to take into consideration that the order of termination did not attract the provisions contained in Chapter VA of the Industrial Disputes Act, 1947 inasmuch as the termination of services of the 1st respondent came within the purview of clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947.

Mr. Naik, learned counsel appearing on behalf of the respondents, on the other hand, would urge that from the letter dated 6th August, 1997 issued by the Ministry of Human Resource Development, Department of Education, Government of India, it would appear that the Project during the 9th Plan period was to continue from 1997-98 to 2001-2002 and in that view of he matter, the services of the 1st respondent should not have been terminated before the Project came to an end.

From the deposition of Ms. Jyothi Kulkarni herself, the learned counsel submitted, it is abundantly clear that the services of the 1st respondent were terminated by way of punishment in lieu of dismissal from service as his behaviour was not proper and, thus, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

Section 2(oo)(bb) of the Industrial Disputes Act, 1947 reads as under:

"termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

It is not a case where the termination of the services of the 1st respondent emanated from non-renewal of contract of employment. Under the general law, the appellants might have been entitled to take recourse to clause XIV of the offer of appointment dated 20.10.1997, but in view of the fact that the terms and conditions of services of the 1st respondent were governed by the provisions of the Industrial Disputes Act, the order of termination must satisfy the requirements thereof.

We may place on record that although a contention has been raised both before the Labour Court as also the High Court that the society does not satisfy the test of an 'industry' as contained in Section 2(j) of the Industrial Dispute Act, 1947. Mr. Nath did not raise any such contention before us.

A finding has been arrived at by the Labour Court that the termination of the services of the 1st respondent, relying on or on the basis of clause XIV of the offer of appointment, is a camouflage and the said finding has been affirmed by the High Court. We are not inclined to interfere therewith, being a finding of fact.

It is, however, not a case where an award of reinstatement could be made. The Society runs the project. The project came to an end in 1999. The plea that the tenure of the project was extended by the Government of India was not put to the Management. Such a plea cannot be raised for the first time before us.

We, therefore, are of the opinion that as the services of the 1st respondent could be terminated on or about 31.10.1999, i.e. at the end of the tenure of the project, interest of justice will be subserved if in stead and place of upholding the award of reinstatement in service, we direct the appellants to pay a sum of Rs. 56,000/- to the 1st respondent by way of compensation which would cover the amount of honorarium to which he would have been entitled to for the period July, 1998 to October, 1999. We direct accordingly.

The said payment shall be made within a period of eight weeks from the date of communication of this order, failing which the same shall bear interest at the rate of 12 per cent per annum.

The appeal is allowed in the above terms.