

SUPREME COURT OF INDIA

M.D., Hindustan Photo Films

Vs.

H.B. Vinobha

C.A.No.229 of 2005

(Tarun Chatterjee J.)

13.05.2009

JUDGEMENT

Tarun Chatterjee, J.

1. In our view, this appeal shall succeed on a very short question. Order of termination issued against the respondents was quashed in writ application filed by the respondents before the High Court of Judicature at Madras. Accordingly, a learned Single Judge of the High Court directed reinstatement of the respondents in service and also a direction was issued to revoke the order of termination passed against them. The appellants filed an appeal before the Division Bench of the High Court.

“The Division Bench, however, dismissed the appeal. Feeling aggrieved, the appellants filed a special leave petition in this Court, which on grant of leave, was heard in the presence of learned counsel for the parties.”

2. The Division Bench in the impugned order made the following observations:

“14. The action taken by the employer can by no means could be regarded as lacking in bonafides.

The facts in relation to this company already referred to make it abundantly clear that the company was so sick that it could not complete in the market. Had it not been a public sector company, the company would probably have closed down long ago. The mere fact that the company is not liquidated as of today does not imply that the company is financially sound or is capably of being revived. The company having become a sick company long ago the formal declaration of sickness was only a recognition of the sickness that had set in much earlier by reason of which the termination of the services of these trainees had become necessary.

15. The inevitable conclusion, therefore, is that the termination of these trainees was lawful and did not call for any interference. Moreover, this was a case where the

persons, could approach the court claim to be the workman covered by the definition of workmen under Section 2[s] of the *Industrial Disputes Act*. The union had also sought to raise an industrial dispute regarding the termination. The proper course for this Court would have been to direct the workmen to pursue their remedy under the Industrial Disputes Act, and not proceed to adjudicate on contested questions of fact and proceed to compel the employer to re-employ as many as 109 trainees, who had undergone training for a period of less than two years. On this ground also, we must hold that the order of the learned Single Judge is not sustainable. We have examined the claim on merits in the light of the arguments advanced before us.”

3. A reading of these findings of the Division Bench clearly shows that the order of the learned single judge was not sustainable and the claim of the respondents on merit could not be sustained. In spite of such findings made by the Division Bench, it affirmed the order of the learned Single Judge only on the ground that since an interim order granted by the learned Single Judge during the pendency of the writ petition continued for the last ten years, it would be inequitable and unjust to deprive them of their employment at this stage. Only on this ground, the judgment of the learned Single Judge was affirmed and the services of the respondents, who were taken as trainees, were directed to be regularized. We are unable to accept these findings of the Division Bench of the High Court when the Division Bench itself had come to the conclusion that the order of regularization of the respondents who were appointed as trainees could not be sustained because the respondents were appointed as trainees for a particular period and at a fixed salary and that period had also expired. Only because of an interim order, the services of the respondents were directed to be continued, which cannot be a ground to hold that they should be regularized as regular employees of the appellants.

4. For the reasons aforesaid, the impugned order is set aside and the order of termination is upheld. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.