

iti Ltd. and ors Vs. Mool Chand and anr

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Court : Rajasthan Jodhpur

Decided On : Nov-21-2013

Appellant : iti Ltd. and ors

Respondent : Mool Chand and anr

Judgement :

1 D.B.Civil Special Appeal No.980/2013 ITI LTD.& ORS.V/s Moolchand Dadhich & anr.

21.11.2013 Hon'ble the Chief Justice Mr.Amitava Roy Hon'ble Mr.Justice P.K.Lohra Mr.Muktesh Maheshwari) Ms.Vandana Bhansali)-for the appellants.

The order dated 1.8.2013 passed in S.B.Civil Writ Petition No.206/2013 affirming the interim restraint granted earlier by the order dated 8.1.2013 is in assailment in the present appeal.

We have heard Mr.Muktesh Maheshwari, learned counsel for the appellants.

For the order proposed to be passed, it is not considered essential to issue any formal notice to the respondents herein.

Briefly stated the facts in bare minimum necessary for the disposal of the present appeal are that the respondent no.1-herein had been initially appointed with the appellants on 26.2.1988 on contract basis and according to him (respondent no.1 herein).he had been continuing since then without any break till his services were

terminated on 27.12.2012.

He has pleaded that his term initially fixed had in between been extended from time to time and though he was required to perform the duties of a regular incumbent, his services inspite of several representations were not regularized.

He eventually approached this Court with S.B.Civil 2 Writ Petition No.1275/02 and finally by the judgment and order dated 9.12.2010 rendered by a Coordinate Bench of this Court in D.B.Civil Special Appeal No.185/2009, the appellants were required to consider his case for regularization, which however, was decided against him on 4.3.2011.

Being aggrieved, the respondent no.1 instituted S.B.Civil Writ Petition No.6305/2011 which is sub-judice before this Court.

It is thereafter on 27.12.2012 that his services have been terminated on the ground that the post against which he was engaged was a temporary one and that he had been inducted on contract basis for a fixed term against a project and that as the project work was already complete, there was no sanctioned post to retain him.

Being aggrieved, he has impugned this decision of terminating his services in S.B.Civil Writ Petition No.206/13.

By the order dated 8.1.2013, the learned Single Judge, after hearing the learned counsel for the parties, in the interim stayed the operation of the order dated 27.12.2012 and directed that he (respondent no.1) be allowed to discharge his duties.

In effecting this arrangement, the learned Single Judge took note amongst others of the submission made on behalf of the respondent no.1 that the appellant-Company did have projects in hand.

As the records would reveal, the appellants thereafter filed their pleadings contending in substance that the project against which the respondent no.1 had been engaged on contract basis limited by time, has since been completed and

consequently, the casual 3 temporary workers like him have been removed.

They averred that the respondent no.1 had not been engaged against any sanctioned post and that the terms and conditions of his engagement did clearly disclose that his services would be discontinued after the concerned project was over.

They pleaded as well that the decision against regularization of his services had been taken in compliance of the decision of this Court.

Mr.Maheshwari has insistently argued that having regard to the nature of engagement of the respondent no.1, he has no right in law to either claim regularization or continuance in service, more particularly, when the project against which he had been accommodated is complete and no work as such is available to be assigned to him.

On instructions, the learned counsel has maintained that if the respondent no.1 is to be retained, he would have to be paid for no work.

We have considered the rival pleadings to the extent necessary at this stage and have also applied ourselves to the arguments advanced.

To start with, the fact that the respondent no.1 had been engaged by the appellants since 1988 is prima facie borne out by the documents appended to the memorandum of appeal.

He (respondent no.1) has claimed that he had been serving the appellants since then without any break till he was terminated from service on 27.12.2012.

Even accepting the plea of the appellants that his engagement was on contract basis, the fact that he had as on 27.12.2012 rendered services for over two decades is demonstrated by the materials on record.

In view of the irreconcilable assertions about the availability of work, we consider it discreet not to record any observation thereon.

Suffice it to mention that the plea of the appellants that if the respondent no.1 is to be retained in terms of the interim restraint granted, he would have to be paid without work, per se does not commend for acceptance having regard to the status of the appellant-Company and the gamut of its activities as expected of a Government of India undertaking.

Admittedly, the issue of regularization of services of the respondent no.1 is pending adjudication before this Court.

There is no complaint with regard to the quality of his services as on date as well.

The interim relief was initially granted by this Court on 8.1.2013 which was eventually confirmed on 1.8.2013.

Noticeably, though in between almost 7 months had elapsed, the order dated 8.1.2013 had not been impugned by the appellants.

On a conjoint consideration of the above aspects and balancing the equities, we are of the unhesitant opinion that no interference with the orders dated 8.1.2013 and 1.8.2013 is called for.

The appeal is thus dismissed.

We however make it clear that the observations made hereinabove have been recorded to deal only with the limited issue raised in the instant appeal.

As the appellants have pleaded that there is no work to be assigned to the respondent no.1, we would request the learned Single Judge, incharge of the roster, to deal with the concerned writ petition expeditiously without however being influenced in any manner by the determination made in the instant appeal.

(P.K.Lohra)J.

(Amitava Roy)CJ Parmar

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