

Anil Kumar Sharma Vs. District Women Development Agency, Banswara and ors.

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Court : Rajasthan

Decided On : Dec-04-2000

Reported in : [2001(91)FLR176]; 2001(4)WLC93

Judge : B.J. Shethna and; Sunil Kumar Garg, JJ.

Acts : [Industrial Disputes Act, 1947](#); [Constitution of India](#) - Articles 226 and 227

Appeal No. : D.B. Civil Special Appeal No. 827 of 2000

Appellant : Anil Kumar Sharma

Respondent : District Women Development Agency, Banswara and ors.

Advocate for Pet/Ap. : M. Mridul, Sr. Adv. and; P.R. Mehta, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

Shethna, J.

(1). The appellant workman has challenged in this special appeal, the judgment and order dated 18.7.2000 passed by the learned Single Judge of this Court

allowing writ petition No. 2374/98 filed by the respondent District Women Development Agency, Banswara (for short 'the Agency') whereby he set aside the award passed by the Labour Court, Udaipur in favour of workman awarding reinstatement with 50% back wages from the date of termination from service.

(2). The respondent Agency is a registered society under the Societies Registration Act. It is engaged in carrying out various programmes/schemes sponsored by the State Government and Union of India for upliftment of women and children in the rural and tribal areas.

(3). On 26.3.93, a requisition was sent to the Employment Exchange, Banswara seeking names of eligible candidates for appointment on the post of L.D.C. and Stenographer purely on temporary and ad hoc basis. Accordingly, the employment exchange sent the names of the eligible persons including the name of the present appellant workman. After interviewing him, initially he was appointed as Stenographer by order dated 19.7.93 purely on temporary and ad hoc basis for a period of one month only. His services were extended for a period of 11 months from 20.8.93 to 19.7.94 by an order dated 8.9.93 (Annex. 4). The workman executed and signed the contract of service at Annex. 5. Under that agreement, the contract shall stand automatically terminated on 20.8.93, however, the Project Director may extend the period of contract as may deem fit. It was categorically mentioned in the said contract that the contract may be terminated by either party without assigning any reason. The services of workman were terminated by an impugned order dated 19.7.94.

(4). On a reference-being made by the State Government to the Labour Court, Udaipur, it directed reinstatement of the workman with 50% back wages from the date of his termination. The same was challenged by the Agency by way of aforesaid writ petition before this Court. The same was allowed by the learned Single Judge of this Court on 18.7.2000. Hence, this special appeal at the instance of the workman.

(5). In case of State, of U.P. and ors. vs. Arun Kumar Singh (1), the Hon'ble Supreme Court has categorically held that the District Rural Development Agency, which is akin to the Agency, is not an industry. On this ground alone, the

impugned award passed by the Labour Court ordering reinstatement of workman with 50% back wages was required to be quashed and set aside because the District Women Development Agency cannot be said to be an industry.

(6). However, it was vehemently submitted by Sr. Advocate Mr. Mridul that the judgment of the Hon'ble Supreme Court in Arun Kumar's case (supra) will have no application to the facts of this case because in that case, the District Rural Development Agency was there whereas in the instant case, it is District Women Development Agency. He also submitted that the Agency has never raised this contention before the Labour Court, therefore, there is no such finding recorded by the Labour Court in its award.

(7). Even assuming for the sake of arguments, that there was no such contention raised before the Labour Court but this being a neat question of law, it can be permitted to be raised by this Court under Article 226/227. When the point goes to the root of the matter and if the learned Single Judge in its discretion permitted the Agency to raise this contention and accepted the same in its favour, then certainly this Court will not interfere with such finding in this special appeal.

(8). Mr. Mridul tried to submit that the learned Single Judge has not given any categorical finding on this point, has no substance.

(9). This very point was pressed into service by learned counsel appearing for the Agency before the learned Single Judge. The same can be seen from the judgment of the learned Single Judge starting from para 5 onwards.

(10). We need not see any reason to once again elaborate the various judgments of the Hon'ble Supreme Court which have been referred to by the learned Single Judge in his order holding that the Agency cannot be said to be an industry.

(11). On merits also, we are of the opinion that the learned Single Judge has not committed an error in setting aside the impugned award passed by the Labour Court. From various appointment orders annexed to the writ petition, it is clear that the appointment of the workman was not made on substantive post. In spite of this, the Labour Court held in its award that his appointment was a substantive

appointment which is absolutely wrong from the appointment order itself. The initial appointment order clearly shows that the appointment of the workman was purely on a temporary and ad hoc basis for a period of one year. After he entered into the agreement, his period was extended for 11 months and when it was found that his services were not satisfactory, the Agency decided to terminate his services. Thus, it was a purely contractual appointment. When the master has lost the confidence in his servant and if his services are terminated, then no Court can interfere with such termination. As soon as the veil is lifted, it is clear that it was a termination simplicior. In such type of cases, there is no question of applicability of the provisions of the [Industrial Disputes Act, 1947](#).

(12). In view of the above discussion, we are of the considered opinion that while allowing the writ petition filed by the Agency, the learned Single Judge has not committed any error which calls for interference of this Court in special appeal.

(13). Hence, this special appeal fails and is dismissed.

(14). Stay petition is also dismissed.