
(2000) 07 KAR CK 0028
In the Karnataka High Court
Case No : W.A. No. 466 of 2000

Navodaya Vidyalaya

APPELLANT

Vs

K.R. Hemavathy

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (oo), 25 F

Citation : (2001) 1 LLJ 779

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Veena Jadhav, for the Appellant; T. Narayanaswamy, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant is a registered society running Navodaya Vidyalayas. It is an instrumentality of the Central Government. For recruitment, it has its own rules and sanctioned cadre. It is aggrieved by the order dated September 22, 1999 passed by the learned single Judge confirming the award dated March 22, 1994 passed by the Central Government Industrial Tribunal directing reinstatement of the respondent with 50% back wages and continuity of service.

2. It is not in dispute that the respondent was appointed on temporary basis against a permanent post of Lower Division Clerk. As per Clause (4) of the memo dated January 26, 1988, initially the appointment was for 89 days. Accordingly, her services stood terminated on the 89th day. However, since no regular appointment could be made by that time, again on April 30, 1988, she was re-appointed for another period of 89 days which came to an end on the forenoon of July 27, 1988 as clearly (stipulated in Clause (4) of the Memo dated April 30, 1988. On July 28, 1988, again she was reappointed pursuant to Order dated July 28, 1988 on a temporary basis till October 11, 1988. Ultimately, on October 15, 1988 she was relieved from service.

3. It is not in dispute that regular appointment has already been made by following the Rules of recruitment. Subsequent thereto, the respondent raised an industrial dispute before the State Labour Court but since appropriate Government was the Central Government, therefore the State Labour Court rejected the reference. Subsequently, reference was made to the Central Government Industrial Tribunal-cum-Labour Court, which, under its order dated March 22, 1994, took the view that though there were intermittent disruptions but she will be deemed to have worked for 240 days in a year and since her services were terminated without giving any compensation as provided u/s 25-F of the Industrial Disputes Act, 1947 (in short the "Act") therefore her termination was bad. The said order has been affirmed by the learned single Judge.

4. In our considered opinion, the Tribunal as also the learned single Judge have erred in directing reinstatement of the respondent for the simple reason that even if the respondent can be said to have worked continuously for more than 240 days but still the fact remains that she was working with the appellant under fixed term Contract of Service and therefore it was not a "retrenchment" within the meaning of Clause (bb) of Section 2(oo) of the Act which reads thus.-

"2(oo).- "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include.

(a).....

(bb) 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;

(c)....."

5. While accepting temporary appointment, the respondent very well knew that it is for a fixed period and the said appointment for a given period was never questioned by her. It is not that by virtue of temporary appointment she had acquired permanent status in the employment. She had questioned termination only on the ground that it amounted to retrenchment u/s 2(oo)(bb) of the Act and therefore the same could not have been done without giving compensation u/s 25F of the Act.

6. Ex facie, the plea raised by the respondent is not tenable inasmuch as neither the Labour Court nor the learned single Judge had adverted to the legal position as noticed above. This aspect has been clarified by the Supreme Court in the case of Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, with reference to Clause (c) Section 2(oo) of the Act and in the case of M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, . In the latter case, it has been held by the Apex Court that at P. 601 of LLJ :

"9. Now with introduction of one more exception to Section 2(oo), under Clause (bb) the Legislature has excluded from the purview of the "retrenchment" (i) 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; (ii) such contract being terminated under a stipulation in that behalf contained in contract of employment. It need not be impressed that if in the contract of employment to such stipulation is provided or prescribed, then such contract shall not be covered by Clause (bb) of Section 2(oo). In the present case, the termination of service of the appellant is as a result of the contract of employment having been terminated under the stipulations specifically provided under Regulation 14 and the order of the appointment of the appellant. In this background the non-compliance of the requirement of Section 25-F shall not vitiate or nullify the order of termination of the appellant."

7. Reliance placed by the learned counsel for the respondent on the judgments of the Supreme Court in cases of H.D. Singh Vs. Reserve Bank of India and Others, and in the case of Bhikku Ram Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, are not relevant for the issue involved in the present case.

8. For the aforesaid reasons, we set aside the Order dated September 22, 1999 passed by the learned single Judge in W.P. No. 14939/2000 and quash the award dated March 22, 1994 passed by the Tribunal in Central Reference No. 61/91.

9. In the result the writ appeal is allowed. No costs.