State Of Rajasthan & Ors vs Rameshwar Lal Gahlot on 14 December, 1995

Equivalent citations: 1996 AIR 1001, 1996 SCC (1) 595, AIR 1996 SUPREME COURT 1001, 1996 AIR SCW 466, 1996 LAB. I. C. 914, 1996 SCC (L&S) 348, 1996 LABLR 482, (1996) 2 SCT 600, 1996 UJ(SC) 1 229, 1996 (1) SCC 595, (1996) 1 SERVLR 595, (1996) 2 CALLT 22, (1996) 1 LABLJ 888, (1997) 77 FACLR 38, (1996) 1 LAB LN 296

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
STATE OF RAJASTHAN & ORS.

Vs.

RESPONDENT:
RAMESHWAR LAL GAHLOT

DATE OF JUDGMENT14/12/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 1001 1996 SCC (1) 595
JT 1995 (9) 621 1996 SCALE (1)11

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard the counsel for both the parties. This appeal by special leave arises from the order of the Division Bench of the Rajasthan High Court in Civil Special Appeal No.292/92 dated April 26, 1994.

The undisputed facts are that respondent was appointed for a period of three months or till the regularly selected candidate assumes office. He was appointed on January 28, 1988 and his appointment came to be terminated on November 19, 1988. When the writ petition was filed, the learned single Judge held that since he had completed more than 240 days, the termination is in violative of Section 25F of the Industrial Disputes Act, 1947 (for short, `the Act') and directed to make fresh appointment of the respondent. When appeal was filed against the latter part of the order, the Division Bench set aside the latter part of the order and directed reinstatement with back wages. As against the order altered by the Division Bench, the present appeal came to be filed.

The controversy now stands concluded by a judgement of this Court reported in M. Venugopal vs. Divisional Manager,LIC., [(1994) 2 SCC 323]. Therein this Court had held that once an appointment is for a fixed period. Section 25F does not apply as it is covered by clause (bb) of Section 2 (oo) of the Act. It is contended for the respondent that since the order of the learned single Judge was not challenged, the termination became final. Consequently, the appellant would be liable to pay back wages on reinstatement. In our considered view, the opinion expressed by learned single Judge as well Division Bench are incorrect in law. When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2 (oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. Unfortunately, neither the learned single Judge nor the Division Bench recorded any finding in this behalf. Therefore, where the termination is in terms of letter of appointment saved by clause (bb), neither reinstatement or fresh appointment could be made. Since the appellant has not filed any appeal against the order of the learned single Judge and respondent came to be appointed afresh on June 27, 1992, he would continue in service, till the regular incumbent assumes office as originally ordered.

The question then is whether the respondent is entitled to payment of back wages. Since the order is found to be in terms of letter of appointment, respondent is not entitled to back wages. The Division Bench was incorrect in directing payment of back wages.

The appeal is allowed to the extent indicates above. No costs.