

Supreme Court of India

Himanshu Kumar Vidyarthi & Ors vs State Of Bihar & Ors on 26 March, 1997

Bench: K. Ramaswamy, D.P. Wadhwa

PETITIONER:

HIMANSHU KUMAR VIDYARTHI & ORS .

Vs .

RESPONDENT:

STATE OF BIHAR & ORS .

DATE OF JUDGMENT: 26/03/1997

BENCH:

K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE :

JUDGMENT :

O R D E R Delay condoned .

This special leave petition arises from the judgment of the Division Bench of the Patna High Court, made on 1.7.1996 in LPA No. 1213/95 confirming the order of the learned single judge in CWJC No.2311/95.

The admitted position is that the petitioner No.1 came to be appointed as Assistant, Petitioner No.2 as Driver and petitioner Nos. 3 to 5 as peons on different dates, viz., on August 1, 1988, November 10, 1989, May 31, 1987 and April 22, 1992. They were appointed in the co-operative Training institute, Deoghar by its principal. They are admittedly daily wage employees. Their services came to be terminated by the principal. Calling that termination in question. they filed a writ petition in the High Court. The main grievance of the petitioners before us is that termination of their services is in violation of section 25F of the Industrial Disputes Act, 1947. The question for consideration, therefore, is whether the petitioners can be said to have been 'retrenched' within the meaning of section 25 F of the Industrial Disputes Act? Every Department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the post in accordance with the rules but were engaged on the basis of need of the work . They are temporary employees working on daily wages. Under these circumstances, their disengagement from service

cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment" , therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary.

The special leave petition is accordingly dismissed.