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SLP(C)No. 8747 OF 2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.15 OF 2004
[Arising out of S.L.P.(C) No.8747/2003]

VIRENDRA PRATAP SINGH YADAV

.....
APPELLANT(S)

:VERSUS:

UNION OF INDIA & ORS.

.....
RESPONDENT(S)

O R D E R

Leave granted.

By means of this appeal the appellant has challenged the part of the order passed by the High Court by which the award of the Labour Court, though upheld, but the relief of reinstatement and back-wages, has been substituted by one year's full salary in lieu thereof.

Learned counsel for the appellant has taken us through the writ petition preferred by the respondents in the High Court against the order of the Labour Court and has rightly pointed out that the only point which was raised and stressed throughout the writ petition and the grounds taken therein was that the Telecom Department was not an industry, hence, the appellant was not a workman. Therefore, the Labour Court had no jurisdiction to decide the dispute. So far this question as raised in the writ petition, rather the only question raised, it has been decided against the respondents by the High Court. It would be pertinent to mention here that the respondents have not challenged the order of the High Court.

The High Court appears to have, of its own, entered into other questions not raised in the writ petition, e.g. that a temporary employee or a casual employee has no right to the post, hence, reinstatement may not have been an appropriate relief. It is submitted on behalf of the appellant that in view of no such ground having been raised, the appellant could not be taken by surprise for being deprived of the relief granted by the Labour Court, on the questions other than those raised and canvassed before the High Court. We also find that in the writ petition it is nowhere challenged that the appellant would not be entitled for back-wages since he may have been gainfully employed elsewhere or for the reason that it may not have been shown by him otherwise. As a matter of fact, no such plea was raised before the High Court. There also seems to be some mix-up of facts with the facts of other cases as an observation has been made that some other named workmen had worked only for a period of one year or so, perhaps to make out the point that it would not be appropriate to allow back-wages for a longer period than what they had actually worked. According to the learned counsel for the appellant, he was in employment since last several years. It is denied by the respondents. We feel that it would have been better if the High Court had confined itself to the question raised by the respondents in the writ petition and canvassed before it rather than to consider other points and propositions which have been decided to the detriment of the appellant. It is submitted on behalf of the respondents that it was open to the High Court to have moulded the relief. We feel that moulding of relief would certainly be permissible but not where the factual questions would also be involved, e.g. in this case that the appellant was gainfully employed elsewhere or not or for how long he was employed with the respondent, these are all questions which are factual in nature, again, whether work was not available so as to deny reinstatement. Such factual questions being involved, it was not safe for the High Court to have moulded the relief unless the party who was adversely affected was put to proper notice by the adversary.

We, therefore, find force in the submission made on behalf of the appellant that the part of the order passed by the High Court, moulding the relief, namely, substituting the relief of reinstatement and back-wages granted by the Labour Court by one year's salary in lieu thereof, is not sustainable. We, therefore, allow the appeal and set aside the order passed by the High Court to the extent it moulded the relief. The relief as granted by the Labour Court is restored.

Costs easy.

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)
NEW DELHI;
JANUARY 06, 2004.

ITEM No.28
A/N MATTER

Court No.10

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.8747/2003

(From the judgement and order dated 24/03/2003 in CMWP 28528/97
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

VIRENDRA PRATAP SINGH YADAV

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(With prayer for interim relief and Office Report)

Date : 06/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s)

Mrs Rani Chhabra,Adv.

For Respondent (s)

Mr. Nirmal K. Verma,Adv.

Mrs. Sarla Chandra,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed and the order passed by the High Court is set aside to the extent it moulded the relief. The relief as granted by the Labour Court is restored.

Costs easy.

(A.S. BISHT)(PROMILA NAGPAL)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]