

XS

C.A.No. 5464 OF 2000
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
ITEM No.104 COURT No.12 SECTION XVI

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

C.A. No. 5464/2000@@
EEEEEEEEEEEEEEEEEEEE

Ranjit Kumar Samanta ...Appellants

VERSUS

U.B. Engg.Ltd. & Ors. ...Respondents

(With appln. for c/delay in filing rejoinder and with
Prayer for I.R. and Office Report)

Date: 02.04.2003: This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKISHNAN
HON'BLE MR. JUSTICE P. VENKATAAMA REDDI

For appellant (s) M/s. Raj Kr. Gupta, Sheo Kr. Gupta,Advs.for
Mr. A.N. Baradaiyar,Adv.

For Respondent (s) M/s. Avijit Bhattacharjee & Atanu Saikia,Advs
Mr. Pijush K. Roy,Adv.for
Mr. Himanshu Munshi,Adv.

UPON hearing counsel,the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

Mr. Sheo Kumar Gupta, the learned counsel for the
appellant started at 11.00 a.m. and concluded at 11.40 a.m.
Then, Mr. Pijush K. Roy, the learned counsel for the
respondent No.1 started and concluded at 12.35 p.m.
The appeal stands disposed of.

.SP1

(Y.P.Dhamija) (Veera Verma)@@
AA
COURT MASTER COURT MASTER
Signed order is placed on the file.

.PA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5464/2000@@
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

Ranjit Kumar SamantaAppellant(s)

Vs.

U.B. Engineering Ltd. & Ors. . . .Respondent(s)

O R D E R@@
EEEEEEEEEEEE

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

This is an appeal preferred by workman challenging the judgment of the Division Bench of Calcutta High Court. The appellant was a Junior Fitter working with the first respondent-U.B. Engineering Company which is an Engineering Company. He was appointed on 15.4.1988. When the appellant was engaged in night duty on 9.9.1990 he met with an accident and sustained injury to his eyes. Thereafter, when he was medically fit, he rejoined duty. According to the appellant, when he claimed compensation before the Workmen Commission for the injury he had sustained, the first respondent-Engineering Company terminated his services on 14.6.1991. The appellant sought a reference under the Industrial Disputes Act. Before the Reference Court, the first respondent contended that the appellant was appointed for a fixed period as the respondent Engineering Company was engaged for the erection of the boiler at Kolaghat Thermal Power Station, and the service of the appellant was terminated as the Company had completed the work.

- 2 -

The Labour Court elaborately considered the question and came to the conclusion that the termination of the service of the appellant was illegal and was in violation of Section 25-F and 25-N of the Industrial Disputes Act. The Labour Court held that the contention of the first respondent herein that the appointment of the appellant was exclusively in connection with the said project work, was not correct. The Labour Court also found that some of the persons, who were working as juniors to the appellant, were allowed to be retained as workmen of the first respondent and the Company's activities had not come to an end. The Labour Court also, on perusal of the attendance register of the first respondent, noted that more than 100 workers were on the pay roll of the Company. An award was passed directing the first respondent Engineering Company to reinstate the appellant with full back wages and other consequential benefits, if any.

The award passed by the Labour Court was challenged by the first respondent Engineering Company by filing a Writ Petition before the High Court of Calcutta, and the learned Single Judge confirmed the award passed by the Labour Court. The learned Single Judge also referred to the attendance register and held that there were more than 100 workmen in the

Company during the preceding 12 months, and the first respondent had not sought for permission of the appropriate authority for retrenchment of the appellant. The learned

- 3 -

Single Judge also affirmed the other findings of the Labour Court and held that the contention of the Company that the project was over and it had terminated the service of the appellant was not correct. The learned Single Judge also noticed that some of the workers, who were juniors to the appellant, were retained in service. Ultimately, the learned Single Judge held that the first respondent Company had not complied with Section 25-F and 25-N of the Industrial Disputes Act.

The decision of the learned Single Judge was challenged by the first respondent Company before the Division Bench. The Division Bench held without discussing the evidence that the appellant's engagement was contractual in nature and on completion of the contract work, if his service was terminated there was no illegality and the reliance was placed on the decision of this Court in Rajendra & Ors. Vs.@@

EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

State of Rajasthan & Ors. 1999 (2) SCC 317. On an offer made@@
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

by the respondent's counsel, the Division Bench also directed payment of certain amount as compensation on the special facts of the case. This finding of the Division Bench is challenged before us.

We heard the learned counsel for the appellant, the learned counsel for the first respondent and also the learned counsel for the State. Based on the evidenc adduced before

- 4 -

the Labour Court, an award was passed and it was held that the termination of the service of the appellant was illegal and that Section 25-F and Section 25-N of the Industrial Disputes Act were not complied with. The Division Bench did not consider any of these aspects in the impugned judgment. The Division Bench proceeded on the assumption that the appointment of the appellant was contractual in nature and that appointment had come to an end when the contract work was over. The finding of the Division Bench is not based on any evidence. While reversing the finding of the learned Single Judge at least some reference should have been made to facts and findings adverted to by the learned Single Judge and Tribunal. As indicated earlier, there was evidence to the effect that some of the juniors of the appellant were retained by the Company after the termination of the service of the appellant. There was also evidence to the effect that the first respondent Company was undertaking various other works and immediately during the preceding 12 months, there were more than 100 workers in the pay roll of the appellant Company. It is also pertinent to note that the first respondent did not produce the order of appointment in respect of appellant to show that he was appointed exclusively for the purpose of project work. There was no definite evidence that the work relating to the erection of the boiler had completed at the time of retrenchment of the appellant. There is also no evidence to show that all or most of the workers, who were

- 5 -

engaged for that work, were retrenched on that particular day. The findings of the Labour Court as well as of the learned Single Judge were only to be confirmed. The Division Bench was not justified in reversing the finding.

The counsel for the first respondent Company contended

that long period has elapsed after the order passed by the Labour Court, that the order of Division Bench was operative for nearly 4 years and that in view of precarious financial position of the Company, the appellant may not be given the full back wages, as indicated in the Award. Having regard to the facts and circumstances of the case, we hold that the appellant is entitled to get 50% of the back wages from the date of the award. The award passed by the Labour Court is modified to the extent indicated above.

The Civil Appeal is disposed of accordingly.

.SP1

.....J.
(K.G. BALAKRISHNAN)@@
AA

NEW DELHI,J.
April 2, 2003 (P.VENKATARAMA REDDI)@@
AA