

ITEM NO.3

COURT NO.8

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(s).3185-3186/2009

(From the judgement and order dated 20/11/2007 in DBCSA No.241/2006 and dated 23/5/2008 in RP No.73/2008 in DBCSA No.241/2006 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

UNION OF INDIA

Petitioner(s)

VERSUS

BHOLA RAM

Respondent(s)

(With appln(s) for c/delay in filing SLP and prayer for interim relief and office report) (For Final Disposal)

Date: 14/09/2011 These Petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI
 HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Rajeev Sharma, Adv.
 Mr. Chandan Sharma, Adv.
 Mr. Sahil Bhalaik, Adv.

For Respondent(s) Mr. Sarad Kumar Singhania, Adv.

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

Delay condoned.

Having failed to convince the Central Industrial Tribunal (for short, 'the Tribunal') and the learned Single Judge of the Rajasthan High Court to approve the action taken by it for termination of the respondent's service, the petitioner filed Special Appeal under Section 18 of the Rajasthan High Court

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Ordinance and succeeded in persuading the Division Bench of the High Court to substitute the award of reinstatement with a direction for fresh appointment of the respondent. However, it is aggrieved by the direction given by the Division Bench for payment of emoluments to the respondent with effect from the date of the award.

The respondent worked as a daily wage employee in Doordarshan Kendra, Jaipur between July and October, 1987. He raised an industrial dispute in the matter of termination of his service by alleging that the action taken by the employer was contrary to Section 25-G of the Industrial Disputes Act, 1947 (for short, 'the Act') inasmuch as persons employed after him were retained in service. The dispute raised by the respondent was referred by the Central Government to the Tribunal under Section 10(1)(c) of the Act.

In his statement of claim, the respondent pleaded that the termination of his service was vitiated due to violation of Section 25-G. He further

pleaded that while giving employment to new hands, the employer did not comply with the mandate of Section 25-

H. In the reply filed on behalf of the petitioner, it

was pleaded that the respondent was employed for a particular work and on completion of the work, his

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service stood automatically terminated. It was also

pleaded that persons junior to the respondent had not been retained in service.

In support of his claim, the respondent examined himself and produced documents which were market as Exhibits DW-1 and DW-2. On behalf of the

petitioner, an affidavit of one Mahendra Pal Singh was filed but he did not appear for cross-examination.

After considering the pleadings and evidence of the parties, the Tribunal held that termination of the respondent's service was vitiated due to violation of Section 25-G. The Tribunal also accepted the respondent's plea that while giving employment to new hands, the concerned authority had not given him opportunity of re-employment.

The writ petition filed by the petitioner

against the award of the Tribunal was dismissed by the learned Single Judge, who held that the finding recorded by the Tribunal on the issue of violation of Sections 25-G and 25-H was based on correct appreciation of the factual matrix of the case and evidence produced by the respondent.

The Division Bench of the High Court set aside the finding recorded by the Tribunal on the issue of violation of Section 25-G but approved the one

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relating to contravention of Section 25-H. The Division Bench then ordained fresh appointment of the respondent with a direction that he shall be entitled to emoluments with effect from the date of the award.

We have heard learned counsel for the parties. In our view, the Division Bench committed a serious error by upsetting the finding recorded by the Tribunal, which was affirmed by the learned Single Judge that while discontinuing the service of the respondent, the employer had acted in violation of the rule of last cum first go embodied in Section 25-G of the Act. While doing so, the Division Bench of the High Court completely overlooked the parameters laid down by this Court for exercise of power by the High Court under Article 226 of the Constitution and the law laid down by this Court in Central Bank of India versus S. Satyam and others (1996) 5 SCC 419.

Dehors the above conclusion, we are convinced that the declaration made by the Division Bench that the respondent shall be entitled to emoluments from the date of the award is totally incompatible with the direction given for his re-appointment. Therefore to that extent the impugned order is liable to be modified.

In the facts and circumstances of the case,

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we feel that ends of justice will be met by substituting the impugned order with a direction for deemed re-employment of the respondent with effect from the date of the order of the learned Single Judge.

The special leave petitions are accordingly disposed of with the following directions:

(i)The respondent shall be deemed to have been re-employed by the petitioner with effect from the date of the order of the learned Single Judge i.e. 20.7.2005 and be paid wages with effect from that day.

(ii)The petitioner shall implement the aforesaid directions within a period of three months from today.

However, it is made clear that this order shall not be treated as precedent for other cases.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master