

STATE OF RAJASTHAN AND ORS.

A

v.

RAMESHWAR LAL GAHLOT

DECEMBER 14, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

*Labour Law :*

*Industrial Disputes Act, 1947 : Sections 2(oo)(bb) 25F. Temporary appointment for 3 months or till regularly selected candidate assumes office—Employee's appointment terminated after 240 days' service in terms of letter of appointment—Writ petition against termination filed—Single Judge held termination violative of S.25F of the Act and ordered employee's appointment afresh—Appeal filed against latter part of order—Division Bench ordered reinstatement of employee with back wages—Held : since termination was in terms of letter of appointment neither reinstatement nor fresh appointment could be made—Hence, termination was not illegal—Since employee was appointed afresh and order of Single Judge was not challenged he would continue in service till regular incumbent assumes office—However, he was not entitled to back wages.*

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The respondent was appointed for a period of three months or till the regularly selected candidate assumed office. His appointment was terminated after 240 days. The respondent filed a writ petition in the High Court which was allowed by a Single Judge on the ground that since the respondent had completed more than 240 days in service, the termination was violative of Section 25F of the Industrial Disputes Act, 1947. The appellants were directed to make fresh appointment of the respondent. The appellants filed against the latter part of the order before the Division Bench of the High Court which set aside the latter part of the order and directed reinstatement with back wages.

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On behalf of the respondent it was contended that since the appellant did not challenge the order of the Single Judge the termination became final and, therefore, the appellant was liable to pay back wages to the respondent on reinstatement.

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Allowing the appeal, this Court

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A HELD : 1.1. When the appointment was for a fixed period unless there is finding that power under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 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. It must be established in each case that the power was misused by the manager or the appointment for a fixed period was a colourable exercise of power. Neither the 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 nor fresh appointment could be made. Since the appellant has not filed any appeal against the order of the Single Judge and respondent came to be appointed afresh he would continue in service, till the regular incumbent assumes office as originally ordered. [675-E-F]

*M. Venugopal v. Divisional Manager, LIC.*, [1994] 2 SCC 323, relied on.

D 1.2. 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. [675-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12056 of 1995.

From the Judgment and Order dated 26.4.94 of the Rajasthan High Court in D.B.C.S.A. No. 292 of 1992.

Manoj Kr. Das for Aruneshwar Gupta for the Appellants.

F Ms. Pratibha Jain for the Respondent.

The following Order of the Court was delivered :

Leave granted.

G 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.

H 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 judgment of this Court reported in *M. Venugopal v. Divisional Manager, LIC.*, [1994] 2 SCC 323. Therein this Court has 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 unless it is colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was 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 indicated above. No costs.

V.S.S.

Appeal allowed.