

DISTRICT PROGRAMME CO-ORDINATOR,  
MAHILA SAMKHYA AND ANR.

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v.

ABDUL KAREEM AND ANR.  
(Civil Appeal No. 5815 of 2008)

SEPTEMBER 18, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ]

*Industrial Disputes Act, 1947:*

*s. 2(oo)(bb) – Driver engaged by a Society in a project – Termination of his services – Reinstatement by Labour court – Affirmed by High Court – Held: It is not a case where termination of services of workman emanated from non-renewal of contract of employment – The Finding arrived at by Labour Court that the termination relying upon or based on a clause of offer of appointment was camouflage, has been affirmed by High Court – However, it is not a case where reinstatement could be ordered, as the project itself has come to an end – Since services of workman could be terminated at the end of tenure of project, instead of instatement, workman be paid a sum of Rs.56,000/- as compensation for the remaining period.*

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CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5815 of 2008

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From the final Judgment and Order dated 9.12.2005 and 20.06.2006 of the High Court of Karnataka at Bangalore in Writ Petition No. 27673 of 2000 (L/TER) and Writ Appeal No. 130 of 2006 (L/TER)

Naveen R. Nath, Lalit Mohini Bhat and Hetu Arora for the Appellants.

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Raja Venkatappa Naik, Raja Raghavendra Naik, R.K. Gupta and Rameshwar Prasad Goyal for the Respondents.

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A The following Order of the Court was delivered

Delay condoned.

Leave granted.

B Mahila Samkhya, Karnataka, is a society registered under the Karnataka Societies Registration Act, 1960.

C This society is engaged in various activities, like encouraging, assisting, promoting, decision making and encouraging group action by women as means of their empowerment and equal participation in the process to bring about social changes and to empower the women. The activities of the said society is being carried out in the districts of Gulbarga, Bidar, Raichur, Bijapur, Bellary, Koppal and Mysore in the State of Karnataka. It has been receiving funds from the Government of Netherlands

D for the aforementioned activities.

E The services of respondent No.1 herein as a driver were hired by the appellants. He was initially appointed in the year 1992 on fixed tenure basis. On or about 20<sup>th</sup> October, 1997, his services were again hired inter alia for the period 1.11.1997 to 31.10.1999. Appellants were, however, entitled to terminate his services with 30 days notice on either side or by payment of compensation of one month's honorarium in lieu of notice.

F It is now not much in dispute that some acts of omission and commission on the part of the 1<sup>st</sup> respondent were brought to the notice of the authorities of the Society and some purported oral enquiry was conducted at Bangalore in connection with some vehicle bearing No. KA-39 M-42.

G By reason of a letter dated 3<sup>rd</sup> July, 1998, however, the services of respondent No.1 were terminated in terms of para 14 of the offer of appointment, stating:

H "Vide the above referred letter, you were appointed as a driver in MSK, Gulbarga as per the terms and conditions mentioned therein. In accordance with para XIV of your appointment letter, your services are no longer required in

this organization and hence your services are terminated with immediate effect, i.e. with effect from 3.7.98 with one month notice in lieu of which you are being paid one month's honorarium."

An industrial dispute was raised by the 1<sup>st</sup> respondent before the Labour Court at Gulbarga. Both the parties adduced their respective evidences before the Presiding Officer, Labour Court. Having regard to the deposition of Ms. Jyothi Kulkarni examined on behalf of the appellants as NW-1, the Labour Court opined:

"The main contention of the 2<sup>nd</sup> party is that the termination of the workman 1<sup>st</sup> party was only a termination simplicitor and the same cannot be disturbed by the Court. In this case the 2<sup>nd</sup> party has produced the letter dt. 3.7.98. Of course the said letter shows that the appointment was only temporary in nature. This statement as reflected in the letter cannot be accepted. In fact the 1<sup>st</sup> party has produced before the court the letter issued by the establishment. The said letter issued by the officials of the 2<sup>nd</sup> party marked as W1 clearly indicates that the service of 1<sup>st</sup> party was terminated not on account of temporary work but it was due to the fact that the same was not proper."

Holding that as no disciplinary enquiry was conducted, the termination order dated 3.7.1998 was illegal, an award of reinstatement in service with full back wages was made. Aggrieved by and dissatisfied with the said award the appellants filed writ petition in the High Court. The High Court while upholding the award of reinstatement in service reduced the back-wages to 30 per cent.

Appellants are, thus, before us.

Mr. Nath, learned counsel for the appellants would submit that the Labour Court and consequently the High committed a serious illegality in passing the impugned award and the judgment, in so far as they failed to take into consideration that the order of termination did not attract the provisions contained in

A Chapter VA of the Industrial Disputes Act, 1947 inasmuch as the termination of services of the 1<sup>st</sup> respondent came within the purview of clause (bb) of Section 2(o) of the Industrial Disputes Act, 1947.

B Mr. Naik, learned counsel appearing on behalf of the respondents, on the other hand, would urge that from the letter dated 6<sup>th</sup> August, 1997 issued by the Ministry of Human Resource Development, Department of Education, Government of India, it would appear that the Project during the 9<sup>th</sup> Plan period was to continue from 1997-98 to 2001-2002 and in that view of the matter, the services of the 1<sup>st</sup> respondent should not have been terminated before the Project came to an end.

D From the deposition of Ms. Jyothi Kulkarni herself, the learned counsel submitted, it is abundantly clear that the services of the 1<sup>st</sup> respondent were terminated by way of punishment in lieu of dismissal from service as his behaviour was not proper and, thus, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

E Section 2(o)(bb) of the Industrial Disputes Act, 1947 reads as under:

F “termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;”

G It is not a case where the termination of the services of the 1<sup>st</sup> respondent emanated from non-renewal of contract of employment. Under the general law, the appellants might have been entitled to take recourse to clause XIV of the offer of appointment dated 20.10.1997, but in view of the fact that the terms and conditions of services of the 1<sup>st</sup> respondent were governed by the provisions of the Industrial Disputes Act, the order of termination must satisfy the requirements thereof.

H We may place on record that although a contention has

been raised both before the Labour Court as also the High Court A  
that the society does not satisfy the test of an 'industry' as con-  
tained in Section 2(j) of the Industrial Dispute Act, 1947. Mr.  
Nath did not raise any such contention before us.

A finding has been arrived at by the Labour Court that the B  
termination of the services of the 1<sup>st</sup> respondent, relying on or  
on the basis of clause XIV of the offer of appointment, is a cam-  
ouflage and the said finding has been affirmed by the High Court.  
We are not inclined to interfere therewith, being a finding of fact.

It is, however, not a case where an award of reinstatement C  
could be made. The Society runs the project. The project came  
to an end in 1999. The plea that the tenure of the project was  
extended by the Government of India was not put to the Man-  
agement. Such a plea cannot be raised for the first time before  
us.

We, therefore, are of the opinion that as the services of D  
the 1<sup>st</sup> respondent could be terminated on or about 31.10.1999,  
i.e. at the end of the tenure of the project, interest of justice will  
be subserved if in stead and place of upholding the award of  
reinstatement in service, we direct the appellants to pay a sum E  
of Rs. 56,000/- to the 1<sup>st</sup> respondent by way of compensation  
which would cover the amount of honorarium to which he would  
have been entitled to for the period July, 1998 to October, 1999.  
We direct accordingly.

The said payment shall be made within a period of eight F  
weeks from the date of communication of this order, failing which  
the same shall bear interest at the rate of 12 per cent per an-  
num.

The appeal is allowed in the above terms. G

R.P.

Appeal allowed.