2019 INSC 835

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5937 OF 2019

[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO. 30953 OF 2018]

ANJANA MITTAL .....APPELLANT

VERSUS

OIL AND NATURAL GAS CORPORATION LIMITED ......RESPONDENT

WITH

CIVIL APPEAL NO. 5938 OF 2019

[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO. 548 OF 2019]

OIL AND NATURAL GAS CORPORATION LIMITED .....APPELLANT

VERSUS

ANJANA MITTAL ......RESPONDENT

J U D G M E N T

VINEET SARAN, J.

Leave granted.

2. Special Leave Petition (c) No.30953 of 2018 is treated as a lead petition.

3. This case has a chequered history. The appellant was appointed as a temporary Assistant Grade-III in the respondent-Corporation in the year 1983. Up to the year 1986, she worked on the said post and had taken normal permissible leaves. However, from the year 1987 to 1993 she was absent for 1968 days in those seven years. The said absence was *ex-post facto* sanctioned as medical leave. In the meantime, on 06.01.1990, the appellant was promoted as temporary Assistant Grade-II. Then on 01.12.1992, Medical Board was constituted by the Corporation which found that the period of leave granted on the basis of many of the medical certificates submitted by the appellant was disproportionate to the severity of the ailments. Then on 26.05.1994, a notice was issued to the appellant requiring her to show cause as to why action under Regulation 24 of the

Terms and Conditions of Appointment and Service Regulation, 1975 (for short "1975 Regulation") relating to termination of services of a temporary employee be not taken by the respondent-Corporation on her continued absence. In response thereto, the appellant submitted her reply on 01.06.1994. Then on 01.07.1994, holding her reply to be unsatisfactory, the respondent-Corporation terminated her services w.e.f. 01.12.1993.

4. Challenging the said order dated 01.07.1994 passed by the respondent-Corporation, the appellant filed Writ Petition No.6742 of 2001 before the Allahabad High Court, which was subsequently transferred to the Uttarakhand High Court at Nainital. By the judgment and order dated 26.08.2004, the High Court dismissed the writ petition filed by the appellant and upheld the validity of the termination order. Against the said order, Special Appeal No. 55 of 2004 was filed before the Division Bench of the High Court, which was dismissed on

29.06.2006 on the ground of maintainability, holding that the appellant was a Workman and the case would be one of an Industrial dispute. Consequently, on 22.10.2008, the appellant made a reference of the dispute to the Central Government Industrial Tribunal-cum-Labour Court (for short "Labour Court"). The said dispute was registered as Industrial Dispute No. 53 of 2009 with the Labour Court, New Delhi. The reference was to the effect as to whether the action of the management of the respondent-Corporation to terminate the services of appellant, was legal and justified. The reference was decided by the Labour Court on 07.08.2018, whereby it was held that the termination of the appellant by the respondent-Corporation was illegal and void. It was also held that the appellant had worked in the respondent-Corporation for more than eleven years and thus could not be treated as temporary employee, as such the provisions of Regulation 24 of 1975 Regulation were not attracted and thus

the respondent-Corporation was directed to reinstate the appellant with full back wages and all consequential benefits.

5. Challenging the said order, the respondent-Corporation filed a Writ Petition No.3015 of 2017 before the High Court of Uttarakhand at Nainital, which was partly allowed to the extent that termination of the appellant was held to be illegal, but instead of full back wages, the appellant was found entitled to back wages only to the extent of 30% with all other consequential benefits in terms of the Award of the Labour Court.

6. Aggrieved by the said judgment, the appellant has filed this Special Leave Petition No. 30953 of 2018. The respondent-Corporation has also filed a separate Special Leave Petition No. 548 of 2019.

7. The facts, as stated above, are not disputed by the parties. Shri P.S. Patwalia, learned Senior Counsel appearing for the appellant has submitted that the appellant, before her

termination, had worked with the respondent-Corporation for more than eleven years and thus she could not be treated as a temporary employee especially when in the year 1990 she was promoted from the post of Assistant Grade-III to Assistant Grade-II. It has thus been contended that Regulation 24 of the 1975 Regulation relating to services of temporary employee could not be applicable to the present case and has rightly been held to be so. It has also been contended that the period of absence of the appellant from the year 1987 to 1993, though on the higher side, was duly *ex-post facto* sanctioned as leave by the respondent- Corporation and as such the same could not be the ground for termination. He has also emphasized the fact that during this period, the appellant was in fact also promoted in the year 1990 as Assistant Grade-II. Mr. Patwalia has contended that the impugned termination order was wholly unjustified and has rightly been set aside by the Tribunal after granting full back wages and consequential benefits. He has submitted that the

order of the High Court, insofar as it provides for only 30% of back wages instead of 100% back wages, is wholly unjustified and no such deduction in back wages was warranted in the facts of the present case.

8. Per contra, Shri J.P. Cama, learned Senior Counsel appearing for the respondent-Corporation vehemently submitted that in the facts of the present case, where the appellant admittedly remained absent for 1968 days between 1987 to 1993 (seven years), the termination order of the appellant was fully justified and since the appellant was a temporary employee, the Regulation 24 of 1975 Regulation would be attracted. He has contended that the appointment letter of the appellant was as temporary Assistant Grade-III and even promotion order dated 06.01.1990 categorically states that the same was also as temporary Assistant Grade-II. He has contended that the Medical Board constituted on 01.12.1992 has clearly found that she had taken excessive

leave on basis of medical certificates submitted by the appellant and as such, after a show cause notice was issued and her reply not having been found satisfactory, she was rightly terminated w.e.f. 01.12.1993. It has been vehemently urged that when the appellant had remained absent for a substantial period during the period of seven years 1987 to 1993, the question of reinstatement would not arise, as the respondent-Corporation cannot be saddled to take work from an employee who does not work and at best, if the termination order is not to be sustained, she could be awarded any lump sum amount in lieu of back wages, and also as compensation in place of reinstatement. The counsel for both the parties have submitted that the appellant would, in any case, be retiring in May, 2020.

9. Having heard learned Senior Counsel for the parties at length and on perusal of record, we are of the view that the High Court has rightly held that the termination of the

appellant in terms of Regulation 24 of the 1975 Regulations, treating the appellant as a temporary employee, was not justified in law and thus could not be sustained, as she had been in employment for over eleven years. The delay of over 14 years in making the reference has been condoned by the High Court holding that she was agitating her rights as she had approached the High Court by filing the writ petition against her termination. This aspect shall be dealt by us at a later stage.

10. The finding of the High Court, that in a case of termination formal domestic enquiry is not required is misconceived, is also correct, as the order of termination has serious civil consequences to an employee, and thus such termination should not be without following the process of law and holding an inquiry. In our view, the High Court has also rightly held that since the period of absence was regularized by the Management by converting the same as period of leave,

and as such the same could not be the ground for termination.

11. The last question which the High Court has decided is with regard to the payment of back wages. It has been held that instead of full back wages, the appellant would be entitled to only 30% back wages, along with all consequential benefits as has been awarded by the Labour Court. In our opinion, this issue requires consideration of this Court. Admittedly, the appellant continued to remain absent for long periods between the years 1987 to 1993. There is no dispute about the fact that during this period of seven years, the appellant remained absent for 1968 days, which comes to an average of over 281 days per year. In effect, in this seven years period, she remained absent for nearly 5.4 years. This would clearly indicate that the appellant was a habitual absentee. Even if it is taken that the appellant was not temporary but deemed to be permanent, yet an employee who remained absent from

duty for such long periods, averaging to over 281 days in a year, continuously for seven years, would not be entitled to any substantial back wages. The Medical Board constituted by the Corporation also found that the period of leave granted on the basis of many of the medical certificates submitted by the appellant was disproportionate to the severity of the ailments.

12. We say so also because, by choosing a wrong forum of filing a writ petition, the appellant had spent more than fourteen years in approaching the correct forum, which was the Labour Court. The appellant ought to have known that she was a workman and would be covered under the Industrial Disputes Act, but had initially chosen not to approach the Labour Court. Challenging the termination order which was passed in the year 1994, she approached the Labour Court only in the year 2008, which was after fourteen years. We have also to take into account that the appellant remained on leave during seven years preceding her termination for an average period of 281 days in a year. Even though the said absence was converted as leave (which was *ex-*

post facto granted in her favour) yet the fact remains that she was a habitual absentee, which would be a material fact while considering the question of payment of back wages to her.

13. Though, we are not interfering with the setting aside of the termination order, but in the facts and circumstances of this case, in our considered view, the ends of justice would be met if the appellant is paid 10% back wages, along with the benefit of reinstatement and all other consequential benefits. It is, however, made clear, that considering the conduct of the appellant, the respondent-Corporation would not be obliged to take work from her, and in lieu thereof she may be paid her salary from this date till the date of her superannuation, which according to the learned counsel for the parties would be in May 2020. We make it clear that the appellant may be treated as reinstated but may not be required to work in the Organisation of respondent-Corporation.

15. With the aforesaid modifications in the impugned judgment and order of the High Court dated 14.06.2018, we dispose of both the appeals. No order as to costs.

..........................J.
[Uday Umesh Lalit]

..........................J.
[Vineet Saran]

New Delhi
Dated: July 30, 2019