A MANAGEMENT OF HEAVY ENGINEERING CORPORATION LTD.

v.

PRESIDING OFFICER, LABOUR COURT AND ORS.

OCTOBER 29, 1996

B

[J.S. VERMA AND B.N. KIRPAL, JJ.]

Labour Law :

C *Industrial Disputes Act, 1947, Section 2(s) and 25—F.*

Workman—Termination of Service—Doctor appointed on adhoc basis—Doctor had, under him male nurse, nursing attendant, sweeper and ambulance driver—Such a doctor worked in shifts—Services of doctor terminated on completion of the term of his ad-hoc appointment without D *complying with S.25-F—Held: although doctor worked in shifts, he was working in a supervisory capacity—Hence, not a workman under S. 2(s)—Therefore, termination of Service of doctor without complying with s.25-F was valid.*

The appellant-Corporation had appointed the respondent as a E **Doctor on an adhoc basis for a period of six months. The respondent was posted at the First Aid Post being maintained by the appellant-Corporation and he used to work in shifts. When the respondent was in shift he was the sole person in-charge of the first aid post. The respondent had, under him male nurse, nursing attendant, sweeper** F **and ambulance driver. The appellant-Corporation terminated the services of the respondent on completion of the term of his ad-hoc appointment. Being aggrieved the respondent raised an industrial dispute before the Labour Court under the Industrial Disputes Act, 1947 on the ground that the appellant had terminated the services of the respondent without complying with Section 25-F of the Act and,** G **therefore, his termination was bad in Law. The Labour Court allowed the petition and ordered reinstatement of the respondent with full back wages. The High Court upheld the decision of the Labour Court. Being aggrieved the appellant-Corporation preferred the present appeal.**

H **On behalf of the appellant—Corporation it was contended that**

the respondent was working in a supervisory capacity and, therefore, he could not be regarded as a workman under Section 2(s) of the Act; and that Section 25-F of the Act was not applicable in the case of the respondent.

Allowing the appeal, this Court

HELD : 1. During the time when the respondent was in the shift he was the sole person in-charge of the first aid post. The respondent had, under him male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taking directions and orders from the in-charge of the first aid post. These persons obviously could not act on their own and had to function in the manner as directed by the respondent whenever he was on duty. They were under the control and supervision of the respondent. When a doctor, like the respondent, discharges his duties of attending to the patients and, in addition thereto supervises the work of the persons subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a workman under Section 2(s) of the Industrial Disputes Act, 1947. Hence, the termination of the services of the respondent without complying with Section 25-F of the Act was valid. [97-E-H, 98-A]

Dr. Surendra Kumar Shukla **v.** *Union of India and Ors.*, **(1986) Lab. I.C. 1516, overruled.**

The Bengal United Tea Co. Ltd. **v.** *Ram Labhaya, Presiding officer, Industrial Tribunal, Assam and* Ors., **AIR (1961) Assam 30, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 921 of 1988.

From the Judgment and Order dated 12.9.86 of the Patna High Court in C.W.J. C. No. 1281 of 1986 (R)

G.L. Sanghi and R.K. Agnihotri for the Appellant.

S.B. Upadhyay for the Respondents.

The Judgment of the Court was delivered by:

A **KIRPAL J.** The appellant had appointed respondent no. 2 as a doctor in the General Duty Medical Officer Grade-II on 17th May, 1978. The appointment was on ad-hoc basis for a period of six months with effect from 18th May, 1978.

Along with respondent no. 2 three other doctors were similarly
B appointed. All the four doctors were posted at the First Aid Posts which are being maintained by the appellant corporation for providing emergency medical services in case of accidents etc. during all the shifts. This ad-hoc appointment to the temporary post was first extended for a period of three months by order dated 30th November, 1978. Second extension was granted for a period of two months by order dated 7th March, 1979.
C

The aforesaid temporary appointment of respondent no. 2, along with three other doctors who were appointed with him. Thus continued for a period of eleven months. By office order dated 17th April, 1979 these doctors were informed that on the completion of their term of
D appointment on ad-hoc basis they would be relieved of their duties with effect from the afternoon of 18th May, 1978. Respondent no. 2 made a representation dated 20th April, 1979 on the receipt of the aforesaid order dated 17th April, 1979. It was contended therein that he had worked for a period of more than 240 days and that his services were terminated without assigning any reason. In appears from the record that in order to fill the
E said vacancies on regular basis advertisements were issued and interviews were held first in the year 1979 and thereafter in the year 1981. Respondent no. 2 had applied but was not found suitable for selection. It is thereafter that respondent no. 2 raised an industrial dispute regarding the alleged illegal termination of his services by order dated 17th April, 1979. Conciliation proceedings took place but it resulted in failure report being
F made by the conciliation officer. Thereupon the Government of Bihar made a reference to the Labour Court, under Section 10(1) (c) of the Industrial Disputes Act 1947 (for short 'the Act'), for deciding the following dispute: "Whether the termination of services of Dr. Chandrahas Prasad by the management from 17.4.1979 is justified? If not, whether he is entitled to reinstatement/or any other relief?"
G

The main contention which was raised by respondent no. 2 before the Labour court was that he had completed 240 days of service and was entitled to a notice of one month as provided by Section 25-F of the Act and as this has not been given, therefore, his termination was bad in law.
H It was also submitted that retrenchment compensation under the said section

had not been given and he was also entitled to the benefit of Section 25-H of the Act and he should have been appointed again. On behalf of the appellant it was submitted that respondent no. 2 was not workman and that he had been appointed for a specified period and on completion thereof he was relieved from duty and, therefore, it could not be said that the provisions of Section 25-F of the Act were in any way attracted. It was also contended that respondent no. 2, after he had been relieved, had applied for fresh selection against open advertisement and, therefore, it must be regarded as if he had waived his right to challenge his termination of service.

The parties led evidence before the Labour Court. Thereupon, by award dated 25th February, 1986 the Labour Court rejected the appellant's contention and held that as no notice of one month, as contemplated by Section 25-F of the Act, had been given to respondent no. 2, therefore, his termination was bad in law. It accordingly ordered the reinstatement of respondent no. 2 with full back wages. It also awarded interest at the rate of twelve per cent per annum.

The appellant then filled a writ petition before the Ranchi Bench of the Patna High Court challenging the said award but without success. Thereafter special leave petition, which was filed by the appellant, was granted on 17th March, 1988 and it was directed that on the second respondent's filing an affidavit as required by Section 17-B of the Act, the back wages and future salary and allowances shall be payable to him in accordance with the award. It was further directed that it was open to the appellant, at any time, to call upon the second respondent to join duty without prejudice to his right in this appeal and if respondent no. 2 was so called then he should join the duty. It was further directed that if respondent no. 2. when called, did not join the duty then he will not get any future salary and allowances.

Sh. G.L. Sanghi, learned senior counsel for the appellant stated that a total amount of Rs. 1,11,378 became payable in respect of back wages and interest thereon and after deducting the income tax payable thereon a sum of Rs. 81,838 was paid to the respondent on 17th October, 1990. It was also stated that respondent no. 2 vide appellant's letter dated 6th November, 1989 was asked to resume duty but he had failed to do so. Therefore in terms of the orders dated 17th March, 1988 of this Court respondent no. 2 become disentitled to receive any future salary and allowances.

A The principal contention urged by Sh. Sanghi in this appeal is that respondent no. 2 could not be regarded as being a workman within the meaning of the expression as defined in Section 2 (s) of the Act. At the relevant time total monthly emoluments of respondent no. 2 were in excess of Rs. 1200 and he was working in a supervisory capacity and, therefore, he could not be regarded as a workman. On the other hand counsel for B respondent no. 2 reiterated that the duties which were being performed by respondent no. 2 could not be regarded as being supervisory.

Reliance was placed on behalf of the respondent on a decision of the Allahabad High Court in the case of *Dr. Surendera Kumar Shukla* v. *Union of India and Ors.*, (1986 Lab. I.C. 1516). The question which arose for C consideration in that case was whether the Assistant Medical Officer Class-II appointed in the Railways could be regarded as a workman to whom the provisions of Section 25-F of the Act would be applicable. In that case the duties of the Assistant Medical Officer were not only to treat railway patients but, according to the Indian Railway Manual, he was also to "meet other administrative requirements where he is in-charge of a hospital or a D health unit or any other institution" and he was also responsible for its establishment and administration. The High Court held that the primary purpose of employing the Assistant Medical Officer was to treat the patients and that the duties of the doctor were technical and that any supervisory function which such doctor exercised was only incidental to the discharge E of his duties and, therefore, it could not be said that he was employed in a supervisory capacity within the meaning of Section 2(s) of the Act. In our opinion the conclusion so arrived at by the High Court was not correct. The duties of a doctor required that he should perform supervisory function in addition to his treating the patients would mean that he had been employed in a supervisory capacity. The Railway Manual clearly stipurated that the F Assistant Divisional Medical Officer would be responsible for the establishment and administration of the hospital or the health unit. This would obviously mean that the Assistant Divisional Medical Officers was employed in a supervisory capacity.

G The decision in the case of the *Bengal United Tea Co. Ltd.* v. *Ram Labhaya, Presiding officer, Industrial Tribunal, Assam and Ors.*, AIR (1961) Assam 30 is also of no assistance to respondent no. 2 because in that case the only question which was considered was whether the functions discharged by the medical officer were of technical nature on not. The Court came to the conclusion that the medical officer discharged technical H duties and, therefore, was a workman within the meaning of Section 2 (s)

of the Act. The Court did not have an occasion to consider the question as to whether the medical officer, in that case, was employed in a supervisory capacity or not. This decision, therefore, has no relevance to the controversy in the present case.

In the present case respondent no. 2 had appeared as a witness before the labour Court. He had, inter alia, stated that he had been appointed along with other doctors and had joined duties on 18th May, 1978. He was posted at the first aid post and along with him one dresser was working and the main duty of respondent no. 2 was to give first aid to the workers on duty. While he did state that he never sanctioned the casual leave of the dresser, who was working with him, but in the latter part of his statement it is recorded that "in the year, 1978 and 1979 I had counter-signed on the casual leave register." It was also stated by him that "the dresser used to work with him, his name was J. Dadel, along with three dressers and two labourers." He of course categorically stated that he was not doing supervisory work. One of the witnesses who appeared on behalf of the management stated that the in-charge of the first aid post is the doctor on duty and the male nurse, nursing attendant, sweeper and ambulance driver are subordinate to this in-charge.

The aforesaid facts, in our opinion, clearly go to show that respondent no. 2 could not be regarded as a workman under Section 2 (s) of the Act as he was working in a supervisory capacity. While it is no doubt true that respondent no. 2, along with the other doctors, used to work in shifts nevertheless during the time when he was in the shift he was the sole person in-charge of the first aid post. He had, under him male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taking directions and orders from the in-charge of the first aid post. These persons obviously could not act on their own and had to function in the manner as directed by respondent no. 2 whenever he was on duty. They were, in other words, under the control and supervision of the respondent. When a doctor, like the respondent, discharges his duties of attending to the patients and, in addition thereto supervises the work of the person subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a workman under Section 2 (s) of the Act.

For the aforesaid reasons while allowing this appeal the judgment of the High Court, under appeal, and the decision of the Tribunal, are set side. The effect of this will be that the termination of the Services of the

A respondent was valid. The respondent will refund to the appellant the sum of Rs. 81,838 received by him from the appellant pursuant to the interim orders passed in this case. The Appellant will also be entitled to the refund of Rs. 29,540 from the Income-tax Authorities being the income tax which was deducted and was Liable to be deposited with the Income-tax department. There will, however, be no order as to costs.

B

V.S.S. Appeal allowed.