REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5797 OF 2008
(Arising out of SLP (C) No. 14337 of 2006)

K. Alex …

Appellant

VERSUS

Delhi State Mineral Dev. Corpn. …

Respondent

J U D G M E N T

TARUN CHATTERJEE,J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 22nd of February, 2006 in LPA No. 366 of 2006 of the High Court of Delhi at New Delhi whereby the Division Bench of the High Court had affirmed the decision of the learned single judge dismissing the Writ Petition of the appellant whereby he sought to challenge the termination of his services from the

Delhi State Mineral Development Corporation (in short, "The Corporation") as illegal, unjust and arbitrary.

3. The brief facts leading to the filing of this appeal may be summarized as under :-

4. The appellant was appointed as a heavy vehicle driver by the Corporation on temporary basis on 3rd of November, 1987 in the pay scale of Rs.1400-2600/-. By an order dated 23rd of January, 1989, the services of the appellant were regularized with effect from the date of his appointment. In 1992, the Corporation retrenched some of its employees on the ground of reduced activities of the Corporation. Accordingly, a Circular dated 27th of August, 1992 was issued to this effect along with a list of retrenched employees to be redeployed in Delhi Administration or any other undertakings/corporations under the control of Delhi Administration. In the said list, the name of the appellant appeared at serial No. 48. It was the case of the appellant that the Corporation, instead of redeploying the appellant as per the policy abovementioned, terminated his services by an order dated 13th of July, 1993 under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service)

Rules, 1965 (in short "the CCS Rules") read with Rule 7 (ii) of the Staff Service Rules of DSIDC, 1978.

5. Feeling aggrieved, the appellant approached the High Court of Delhi challenging the aforesaid order of termination as illegal, unjust and arbitrary. By an order dated 15th of December, 2005, the learned single judge, while holding that the termination of services of the appellant treating him as a temporary employee was not proper, dismissed the writ petition on the ground that on abolition of post, the appellant had no right to continue in service. Against this decision of the learned single judge of the High Court, the appellant filed a Letters Patent Appeal, which was, however, dismissed by the judgment and order dated 22nd of February, 2006. It is this decision of the High Court, which is impugned in this appeal on grant of leave.

6. We have heard the learned counsel for the parties and examined the impugned judgment of the Division Bench of the High Court as well as of the learned Single Judge and the other materials on record including the re-deployment policy of the Corporation. Before we deal with the respective submissions of the learned counsel for the parties, we deem it expedient at this stage to reproduce the relevant provisions of the CCS Rules and

the Staff Service Rules of DSIDC, which are required to be considered for a proper decision of this appeal.

7. As already noted, the Corporation had terminated the services of the appellant under sub-rule (1) of Rule 5 of the CCS Rules read with Rule 7(ii) of the Staff Service Rules of DSIDC, 1978, sub-rule (1) of Rule 5 of the CCS Rules, 1965 may be reproduced as under: -

> *"**5 Termination of Temporary Service***
> *(i) (a) The services of a temporary Government servant who is not in quasi permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the authority or by the appointing authority to the Government servant.*
> *(b) The period of such notice shall be one month; provided that the services of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of pay plus allowance for the period of the notice at the same rates at which he was drawing then immediately before the termination of his services or, as the case may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum, equivalent to the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month."*

Rule 7 (ii) of the Staff Service Rules, DSIDC reads as under :-

> *"Matters not specifically covered in these service rules shall be governed by the provisions of the corresponding Rules and Regulations applicable to central Government employees."*

Rule 3 (iv) of the staff service rules is yet another relevant provision and may be reproduced as under:-

> *"Temporary Employee who has not completed 3 years of continuous service in the corporation"*

8. Keeping the aforesaid provisions in mind, let us now examine the submissions of the learned counsel for the parties. The learned counsel for the appellant argued at the first instance that the termination of the services of the appellant by the Corporation was illegal and arbitrary inasmuch as the policy of re-deployment of retrenched employees published by Circular dated 27th of August, 1992 was not at all given effect to in the case of the appellant. The learned counsel for the appellant further submitted that the services of the appellant were terminated under Rule 5 of the CCS rules, even though the appellant was a regular employee. It was further submitted by the learned counsel for the appellant that the Corporation had a

policy of redeploying retrenched employees and in accordance with its policy, the name of the appellant was included at Serial No. 48 in the list of retrenched employees to be re-deployed but the Corporation redeployed all the employees except the appellant. The learned counsel for the appellant finally contended that the services of the appellant were terminated when the appellant was 35 years old i.e. at the time when the services of the appellant was terminated, he had already crossed the age at which, he could not have sought public employment and accordingly, this aspect was totally ignored by the High Court while affirming the order of termination passed against the appellant.

9. The submissions put forward by the learned counsel for the appellant, as noted hereinabove, were hotly contested by the learned counsel for the Corporation. The learned counsel for the Corporation further submitted that the termination of the services of the appellant had become necessary in view of the peculiar facts and circumstances of the case, which were beyond the control of the Corporation and no discrimination could be attributed to it because the services of the appellant were terminated, being the junior most at the place of alternate

employment provided by the Corporation. The learned counsel for the Corporation also argued that the services of the appellant were never confirmed and the regularization, if there be any, did not mean confirmation in view of the express stipulation in Regulation 3(iii) which provides that the employee would be confirmed if the management is satisfied with his performance during the period of his probation. On the question of re-deployment of the appellant, it was argued by the learned counsel for Corporation that no orders were received from the Delhi Administration regarding the appellant's re-deployment after 27th of August, 1992 till the date of his termination and therefore, no discrimination could be alleged by the appellant.

10. In the light of the above submissions, the question that needs to be decided in this appeal is whether it was arbitrary and illegal on the part of the Corporation not to implement its re-deployment policy in the case of the appellant, even though his name appeared at Serial No.48 in the list of retrenched employees to be redeployed and when all but the appellant were redeployed. Before we answer this question, we deem it appropriate to reproduce the findings of the High Court on this

question while affirming the decision of the learned single judge, which are as under: -

> *"…….When the service of an employee is terminated on closure of a project or for some other reason, there is no right in that employee to get re-employment in some other organization. The only right which the employee has is to get closure compensation under Section 25-FFF of the Industrial Disputes Act, if he is a workman.*
>
> *It is submitted that some other employees were employed by different government departments but in our opinion that was not a matter of right but on humanitarian consideration. The petitioner was at any event the junior most operator and cold not claim to be re-employed as of right……."*

11. Having examined closely the above findings of the High Court in the light of the materials on record and the factual matrix of this case, we find that it is true that when the services of an employee are terminated on closure of a project or for some other reason, the employee cannot seek re-employment in some other organization as of right. But it cannot be ignored that the present case is not so much about the appellant's right to hold the post on abolition of post but about the appellant's right to claim re-deployment in terms of the policy of the Corporation

particularly when the policy was implemented in respect of all the other employees who were retrenched and similarly placed.

12. Out of the list of 275 retrenched employees, only the services of the appellant were terminated. Therefore, it is difficult to conceive how in the single case of the appellant only, his services could not be restored. This, in our view, is discriminatory in nature and violative of the right to equality. The explanation thus offered viz., that the appellant was junior most cannot find our approval and cannot be accepted. In any view of the matter and considering this long course of time, a single post has certainly fallen vacant where the appellant can very well be accommodated. Even if we hold that the closure of Bhatti Mines and reduction in the activities in Gujranwala mines, as held by the learned single judge, forced the Corporation to terminate the services of the appellant, even then, the irresistible conclusion must be that out of the list of 275 retrenched employees, only the appellant's services were terminated.

13. It is also seen that all the persons, whose names were mentioned in the list of retrenched employees to be redeployed, were absorbed either in Delhi Administration or any other

undertakings/ corporations under the control of Delhi Administration while some of them were retained in the Corporation itself. It is only the appellant who was left out. This action on the part of the Corporation, therefore, cannot be accepted and accordingly, arbitrary and illegal.

14. There is another aspect of this matter. As noted herein earlier, the learned counsel for the appellant submitted before us that the termination of the services of the appellant by the Corporation under sub-rule (1) of Rule 5 of the CCS Rules was illegal and arbitrary because the appellant was a regular permanent employee whereas the said rules would be applicable to only temporary employees.

15. From the materials available on record, we have observed that the services of the appellant were regularized by an Office Order dated 23rd of January, 1989 with effect from the date of his appointment i.e. 4th of November, 1987. Therefore, it is clear that the appellant was not a temporary employee but a regular employee, even if we hold that his services were not confirmed under Regulation 3(iii). Even otherwise, the appellant could not be equated with temporary employees because Rule 3(iv) of

DSIDC (Staff Service Rules), 1978 defines a temporary employee to mean *"one who has not completed three years of continuous services in the Corporation"* whereas in the present case, the appellant had already completed more than 5 years of continuous service. Even the learned single judge in his judgment has, at one stage, held that the appellant was not a temporary employee. The learned single judge had gone to the extent of saying that even if it is assumed that the corporation wrongly applied sub-Rule (1) of Rule 5, then also, the decision of termination cannot be said to be illegal because on an overall conceptus of facts, there was no need of such personnel because the work in the Corporation was reduced and the personnel were rendered surplus. It also observed that the re-deployment could not have been claimed as of right and the appellant could not allege any discrimination because the appellant was the junior most in the category of HEMM Operators.

16. We have already noted herein earlier that we are not convinced with the explanation offered by the Corporation for not redeploying the appellant, his termination must be held to be arbitrary and unjust. Even otherwise, the Corporation could not

terminate the services of the appellant by resorting to the Temporary Service Rules and on this ground also, the termination of the appellant was illegal and invalid and is liable to be quashed.

17. For the reasons aforesaid, the judgments of the Single Judge as well as of the Division Bench of the High Court are liable to be quashed and are, accordingly, set aside and the appeal is thus allowed. The Corporation is directed to reinstate the appellant with immediate effect in any organization under the Delhi Administration or absorb him within the Corporation itself. In view of the peculiar facts of this case, no back wages are allowed and no order as to costs.

……J.
[TARUN CHATTERJEE]

NEWDELHI: **……**
J.

September 23, 2008 **[HARJIT SINGH**

BEDI]