

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 963 OF 2010
[Arising out of SLP(C) No.11095/2009]

UNION OF INDIA & ORS

.....APPELLANT(S)

Versus

S. VETTU PERUMAL

.....RESPONDENT(S)

O R D E R

Leave granted. Heard the parties.

2. The respondent was provisionally appointed as Extra Departmental Messenger in the Telegraph branch of Post Office, Nazareth on 8.1.1996. When the Telecom Centre was opened at Nazareth on 16.8.1996, the respondent was engaged as a Coolie Messenger on contract basis and charges were paid to him for delivery of telegrams on hourly basis at the rates prescribed by the Department. He was neither an employee on full-time basis nor on a salary or daily wages. The respondent continued as Coolie Messenger on contract basis for nearly a decade.

3. On 21.3.2006, a notification was issued by the BSNL inviting bids for delivery of telegrams on work contract basis. The respondent submitted his bid of Rs.10/- per delivery of telegram. The appellant found that the charges for delivery of telegram nearby Tuticorin was only Rs.3/- per telegram and compared to it the quotation of

respondent

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was very high. He was, therefore, invited for a negotiation. He did not turn up. The contract was, therefore, awarded to someone else. Feeling aggrieved, the respondent filed a writ petition in the Madras High Court for quashing the tender notification dated 21.3.2006 and for a direction to the Department to 'reinstate' him with all consequential benefits.

4. A learned single Judge of the High Court allowed the said petition by order dated 25.1.2007 (modified on 7.6.2007) directing the appellants to consider the case of the respondent by absorption in any future vacancy. Feeling aggrieved, the appellants filed a writ appeal which was dismissed by the Division Bench of the High Court on 1.12.2008. The said order is challenged in this appeal by special leave.

5. The learned single Judge has categorically recorded a finding that the respondent was working only on contract basis and payment was made on hourly basis. If that is so, the respondent could not be considered as an 'employee' either on daily-wage or a salary. In fact, the respondent participated in the tender process where he was required to quote the minimum charges for delivery of

telegrams and

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only when his bid was not accepted, he chose to approach the High Court praying for absorption. Having regard to the principles laid down in *Secretary, State of Karnataka Vs. Umadevi*, (2006) 4 SCC 1, the question of directing regularisation or absorption of Coolie Messenger working on contract basis paid on hourly basis does not arise.

6. Therefore, we allow this appeal, set aside the impugned orders of the learned single Judge affirmed by the Division Bench. This will not come in the way of respondent participating in future tender processes or being considered under any scheme.

.....J.
(R.V. RAVEENDRAN)

JUDGMENT

New Delhi;
January 25, 2010.

.....J.
(K.S. RADHAKRISHNAN)