
(2019) 03 RAJ CK 0150
In the Rajasthan High Court
Case No : Civil Writ No. 19343 Of 2018

Ajmer Vidyut Vitran Nigam Ltd.

APPELLANT

Vs

Devalal And Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)
Constitution Of India, 1950 — Article 227

Citation : (2019) 03 RAJ CK 0150

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Vikram Singh

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner aggrieved against the award dated 20/6/2018 (Annex.P/1), whereby, the Labour Court, Bhilwara came to the conclusion that the petitioner was employer of the workman - respondent no.1 and the termination of his services on 1/11/2018 was not valid and he was entitled for reinstatement along with 1/3rd back wages.

The respondent no.1 workman raised a dispute, which was referred by the appropriate Government to the Labour Court vide Notification dated 22/6/2009. In the Statement of Claim, the workman claimed that he was engaged as lineman in the Month of January, 2006 by the respondent no.2 contractor and he has been working as lineman with the petitioner and had completed 240 days in a calender year, he was being paid salary of Rs.4,500/- pm and that the petitioner was the principal employer. On 8/6/2008, while undertaking the work of correcting fault on 11 KV Grid line, on account of electric shock he fell down and suffered grievous injuries, he was taken to hospital and remained admitted from 8/6/2008 to 5/7/2008 and availed medical leave till 30/10/2008. On improvement in his condition he joined back on 1/11/2008, however, he was not allowed to join by informing that someone else has been engaged. Based on the

said submissions, relief was claimed alleging violation of mandatory provisions of Industrial Disputes Act, 1947 ('the Act, 1947').

The Statement of Claim was responded by the petitioner, wherein, it was denied that the contract was given to respondent no.2 and that the applicant was engaged as lineman. The averments regarding completing 240 days in the previous calendar year were denied and it was indicated that the burden lies on the workman to prove the same. Specific submissions were made that on 27/9/2006 the contract of maintenance of 33/11 KV G.S.S. was given on contract and on 4/10/2006 the G.S.S was handed over to respondent no.2. It was further indicated that on 8/6/2008 the accident occurred on account of negligence of the workman and that the contract was till 13/8/2008, which came to an end on the said date and that on the date when termination is alleged, the workman did not appear. Based on the above submissions, it was submitted that the claim be rejected.

Evidence was led by the parties and that after hearing the submissions, the Labour Court observed that log sheets from 11/8/2006 to 18/2/2007 have been produced, wherein, there were signatures of the workman, the Assistant Engineer, who [Principal employer] appeared in the witness box admitted that before the accident the workman was given regular duty, whereafter, the Labour Court came to the following conclusion:

"दोनों पक्षों के अभिवचनों के अनुसार दुर्घटना दिनांक 8.6.2008 को हुई। प्रार्थी ने दिनांक 11.8.2006 से 18.2.2007 तक की लॉग शीट पेश की है। अतः उक्त दैनिक लॉग शीट और सहायक अभियंता की साक्ष्य को सम्मिलित रूप से देखा जाये तो यह स्पष्ट होता है कि प्रार्थी दिनांक 11.8.2006 से 8.6.2008 तक नियमित रूप से जी. एस.एस., घेंवरिया में लाईन मेन का कार्य करता रहा है। इस प्रकार उसने एक वर्ष में 240 दिवसों तक उक्त कार्य किया है। विपक्षी सहायक अभियंता ने अपने बयानों में स्वीकार किया है कि जी.एस.एस. के रखरखाव व संचालन का कार्य स्थायी प्रकृति का कार्य है। साक्ष्य से यह प्रकट हुआ है कि लाईन मेन विभिन्न फीडरों में विद्युत लाईन प्रवाहित करने/बंद करने तथा विद्युत सप्लाई को मेन्टेन करने, फ्यूज बांधने आदि का कार्य करता है। इस स्थिति से इन्कार नहीं किया जा सकता है और निश्चित ही किसी विद्युत केन्द्र को चलाने के लिए यह कार्य महत्वपूर्ण तो है ही साथ ही निरंतर जारी रहने वाला व स्थायी प्रकृति का कार्य है। लाईन मेन के अभाव में जी.एस.एस. के समुचित रखरखाव की अपेक्षा नहीं की जा सकती है।

विपक्षी द्वारा हमें यह बताया गया है कि जी.एस.एस. घेंवरिया के रखरखाव का ठेका संबंधी अनुबंध दिनांक 27.9.2006 को हुआ-जिसके आधार पर दिनांक 4.10.2006 से 13.8.2008 तक यह ठेका विपक्षी सं0 2 के पास रहा-जिसका संचालक दूदा राम नामक व्यक्ति था। विपक्षी की साक्ष्य के आधार पर इन तथ्यों को सही मान भी लिया जाये तो भी स्पष्ट है कि दिनांक 4.10.2006 के पहले दिनांक 11.8.2006 से ही प्रार्थी जी.एस.एस. घेंवरिया में कार्यरत था। अर्थात् अनुबंध पर कार्य दिये जाने से पूर्व से ही प्रार्थी यह कार्य जी.एस.एस. घेंवरिया पर कर रहा था। ऐसी स्थिति में कार्य को अनुबंध पर दिये जाने मात्र के आधार पर प्रार्थी की नियमित सेवाओं पर प्रतिकूल प्रभाव नहीं पड़ता है। मान0 उच्चतम न्यायालय व उच्च न्यायालय ने विभिन्न न्यायिक दृष्टान्तों में श्रमिक के अधिकार को खत्म करने के लिए उसे अनुबंध पर दर्शाने के व्यवहार को उचित नहीं माना है। वैसे भी अधि0 1947 की धारा 2(एस) में राज0 सरकार द्वारा किये गये प्रावधान के अनुसार अनुबंध पर कार्यरत श्रमिक भी इस अधि0 के तहत श्रमिक की तारीफ में आता है। हस्तगत मामले में हम यह पाते हैं कि प्रार्थी श्रमिक ने विपक्षी सं0 एक के यहां दिनांक 11.8.2006 से कार्य प्रारंभ किया और उसने एक वर्ष में 240 दिन निरंतर कार्य किया। अतः उसका नियोजन नियमित प्रकृति का रहा है एवं विपक्षी क्रम एक उसका मुख्य नियोजक [Principal employer] है।

यहां यह उल्लेख करना भी उचित होगा लाईन मेन के पद पर कार्य करने के दौरान ही वह विद्युत पोल से गिर कर चोटग्रस्त हुआ और उसे विद्युत कंरट भी लगा। विपक्षी के गवाह सहायक अभियंता इस्लामुद्दीन गौरी ने शपथ पत्र में अंकित किया है कि उसके 33/11 के.वी. जी.एस.एस.पर कार्य करने के दौरान दुर्घटना हुई थी। अतः यह स्पष्ट है कि उसने लाईन मेन का कार्य किया है।"

It is submitted by learned counsel for the petitioner that the Labour Court fell in error in accepting the claim of the workman. It was emphasized that the workman himself claimed that he was engaged by the contractor and that once he was engaged by the contractor and the contract came to an end before the retrenchment has been alleged, it cannot be said that the petitioner retrenched the workman.

Further submissions were made that except for producing the log sheets for a particular period, the workman has failed to produce any material regarding his having completed 240 days in a calender year and as such the provisions of the Act, 1947 has no application and, therefore, the award impugned deserves to be quashed and set aside.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record along with record of the Labour Court.

It is true that in the Statement of Claim before the Labour Court, the workman claimed that he was engaged in January, 2006 by the contractor. Much reliance has been placed by the petitioner on the said averment in the Statement of Claim, however, the material which has come on record clearly indicates an admitted position that the workman was working with the petitioner from 11/8/2006 to 18/2/2007 regarding which the log sheets have been produced bearing signature of the workman. It is the case of the petitioner that the contract was given to the contractor on 4/10/2006 vide Ex.M-2 and the same was extended upto 13/8/2008 vide Ex.M-3. Once the workman has shown to be working based on the log sheets from 11/8/2006 i.e. prior to the period the G.S.S. was handed over on contract, the same necessarily means that the workman was working with the petitioner on being engaged by the petitioner itself. Whereafter, it is an admitted fact that on 8/6/2008 the workman while working at the 11 KV line suffered electric shock, resulting in his hospitalization, which clearly indicates that the workman was working with the petitioner between the period 11/8/2006 to 8/6/2008 and, therefore, it cannot be said that the workman did not complete 240 days in the previous calender year. Once from the material which has come on record, it is established that the workman had worked with the petitioner from before the maintenance contract was given, there is no reason to hold, merely on account of one line averment in the Statement of Claim and affidavit that the workman was not engaged by the petitioner.

Further in view of provisions of Section 2(s) of the Act, 1947, as amended in the State of Rajasthan, the petitioner even otherwise is the principal employer, even

if the workman was at the time of accident working under the contract.

In view of the above fact situation, the findings recording by the Labour Court, as noticed hereinbefore, cannot be said to be perverse so as to require interference under Article 227 of the Constitution of India.

There is no substance in the writ petition and the same is, therefore, dismissed.