
(2016) 10 RAJ CK 0036
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11732 of 2012

Assistant Engineer (TLCD) SD-IV

APPELLANT

Vs

Prakash Singh

RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2017) 152 FLR 1104 : (2017) 1 LLJ 54

Hon'ble Judges : Mr. Alok Sharma, J.

Bench : Single Bench

Advocate : Mr. Virendra Lodha, Senior Advocate with Mr. Rapi Patni, Advocates, for the Petitioner; Mr. S.K. Singodiya, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. Alok Sharma, J. - Under challenge is the impugned award dated 23-1-2012 passed by the Labour Court No. 2 Jaipur in LCR No.1553/1998 holding that the respondent workman (hereinafter `the workman`) retrenched on 23-9-1989 by the Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter `the Nigam`) was entitled to succeed in his claim petition and to a direction for reinstatement as a casual worker on muster rolls albeit without back wages.

2. Mr. Virendra Lodha appearing with Mr. Tarpit Patni on behalf of the petitioner Nigam submitted that in a similar matter Assistant Engineer (TLCD) v. Leela Ram, SBCWP No.11720/2012 decided on 14-9-2012, this court relying on the judgment of the Apex court in the case of Incharge Officer v. Shankar Shetty [(2010)9 SCC 126] and Sain Steel Product v. Naipal Singh [(2003)4 SCC 628] directed that instead of reinstatement of the workmen on the post of casual workers after a period of over 23 years-which had elapsed between their retrenchment and the passing of the award the workman be instead paid in lieu compensation of Rs. 85,000/-.

3. Mr. Lodha submitted that in the instant case the workman had worked all of 51

days in November, 1986, August, 1989 and September, 1989, yet the Labour court perfunctorily drawing adverse inference against the petitioner Nigam on its failure to produce muster rolls generally directed to be produced without any specificity held that the workman must have worked for over 240 days in the 12 months immediately preceding his retrenchment. On that basis the Labour court concluded that the retrenchment of the respondent workman was in contravention of Section 25F of the Industrial Disputes Act, 1947 (hereinafter 'the Act of 1947'). It has been submitted that this was so done even despite no averment in the claim petition with regard to specific department in the Nigam whereby the workman claimed to have worked 240 days in 12 months immediately prior to his retrenchment on 23-3-1989. Mr. Lodha however submitted that on parity with the judgment in the case of Assistant Engineer v. Leela Ram (supra) the impugned award 23-1-2012 with regard to relief of reinstatement be altered to that of monetary compensation to the respondent workman.

4. Per contra, Mr. Singodiya, counsel for the workman has supported the impugned award and submitted that the Labour court correctly drawing adverse inference against the Nigam for its failure to submit muster rolls despite notice has rightly concluded that the workman had worked for 240 days in the 12 months immediately preceding his retrenchment and finding contravention of Section 25f of the act of 1947 has directed reinstatement. Therefore the impugned award be upheld, he submitted.

Heard. Considered.

5. Admittedly the respondent workman a casual worker with the petitioner Nigam was retrenched on 23-9-1989. This retrenchment has been found by the Labour Court to be in contravention of Section 25F of the Act of 1947 under the award dated 23-1-2012. The labour court has thereupon on the assumption that reinstatement is the consequential relief in all cases without regard to the facts of case, held the workman to be entitled for reinstatement overlooking multiple aspects necessary to be considered on the question of relief. This was not appropriate in view of the judgment of the Apex Court in the cases of Incharge Officer v. Shankar Shetty (supra) and Sain Steel Products v. Naipal Singh (supra). In my considered opinion, it would be more appropriate to substitute in the facts of the case, the relief of reinstatement to one of monetary compensation for the reason that respondent workman was engaged at best for 2 years as a casual workman and presently over 27 years have passed since the event of retrenchment. Monetary compensation in the circumstances would be appropriate relief as in two other similar cases decided by this court i.e. Assistant Engineer v. Leela Ram, SBCWP No.11720/2012 and Assistant Engineer v. Pit Ram, SBCWP No.11730/2012 decided on 14-9-2012.

6. Consequently, I would partly allow the writ petition. The impugned award dated 23-1-2012 is modified and on the issue of relief it is directed that instead of reinstatement of the workman, a monetary compensation of Rs.1,50,000/- be

granted to him. The petitioner Nigam is directed to pay the compensation of Rs.1,50,000/- within a period of two months from presentation of a certified copy of this order. Failure to do so will entail interest 9% per annum on the amount of compensation from the date of this order till the date of payment of compensation.

7. The petition stands disposed of accordingly.