

**(2015) 07 RAJ CK 0172**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 9100 of 2008**

Bharat Singh

APPELLANT

Vs

The Judge, Labour Court-I and Others

RESPONDENT

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**Date of Decision :** 01-07-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 2(oo), 25-F, 25-G

**Citation :** (2015) 07 RAJ CK 0172

**Hon'ble Judges :** Veerender Singh Siradhana, J

**Bench :** Single Bench

**Advocate :** Gayatri Rathore, for the Appellant

**Final Decision :** Dismissed

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## Judgement

Veerender Singh Siradhana, J—Aggrieved of the award dated 24th of June, 2008, passed by the Labour Court-I, Jaipur, the petitioner has approached this Court with the prayer for the following relief(s):--

"It is, therefore, humbly prayed that this Hon''ble Court may kindly be pleased to accept and allow the present writ petition, to quash and set aside the order dated 24.06.2008 and further the petitioner be reinstated in service with all consequential benefits.

Any other appropriate order or direction which this Hon''ble Court deems fit and proper in the facts and circumstances of the present case may also be passed in favour of the petitioner."

2. Briefly, the skeletal material facts necessary for appreciation of the controversy raised herein needs to be first noticed. The petitioner-workman aggrieved of termination of his employment on 4th June, 1999, by the respondent-employer raised an industrial dispute. On a reference made by the State Government, the Labour Court-I, Jaipur, taking into consideration the statement of claim, response filed to it on behalf of the respondent-employer,

evidence adduced by the parties and materials available on record; made the impugned award in negative against the petitioner-workman holding the termination of employment of the petitioner-workman as legal and valid.

3. Learned counsel for the petitioner reiterating the pleaded facts, and grounds of the writ application, asserted that the findings arrived at by the Labour Court, are illegal, arbitrary, and contrary to the materials available on record. It is pleaded case of the petitioner-workman that his appointment was made on temporary basis as Tractor Driver on 1st May, 1997. The services of the petitioner-workman were terminated on 4th June, 1999, without any notice, notice pay and retrenchment compensation, though there were vacancies in existence.

4. According to the learned counsel, the conclusion arrived at by the Labour Court to the effect that the case of the termination of employment of the petitioner-workman was not within the ambit of the definition of "retrenchment" as defined under Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act of 1947"), is perverse as well as violative of Section 25-F, G and H of the Act of 1947. Referring to the statement deposited by Ram Lal Meena, who appeared as a witness on behalf of the respondent-employer, learned counsel would submit that the petitioner-workman worked with effect from 10th April, 1998 to April, 1999, and not with effect from 7th May, 1997 to 31st May, 1997. Moreover, in the sanction letter, the word "contract" was nowhere mentioned. Thus, the Labour Court fell in gross error while arriving at the findings on the basis of testimony deposited by Ram Lal Meena. The attendance-sheets clearly reflected that the petitioner-workman continued to work with the respondent-employer upto 4th June, 1999.

5. It is further contended that after terminating the employment of the petitioner-workman, the respondent-employer engaged fresh hands on contract basis, as would be evident from the contents of the reply to the statement of claim filed on behalf of the respondent-employer before the Labour Court.

6. The learned counsel has emphatically argued that violation of mandate of Section 25-G and H of the Act of 1947, is also apparent on the face of record, and therefore, the impugned award dated 24th June, 2008, is bad in the eye of law.

7. In response to the notice of the writ application, the respondent-employer has filed its counter affidavit reiterating the stand before the Labour Court and supporting the findings arrived at.

8. Learned counsel appearing on behalf of the respondent-employer referring to the statement made under paragraph 5 of the reply vehemently argued that the Agriculture Farm, Padasoli, was on lease for the agricultural purposes under the seed programme. An advertisement was also proposed by the Superintendent, Padasoli, for appointment of Tractor Driver(s) on contract basis. However, the vacancies were not advertised. Further, the Superintendent, Farm Padasoli, vide

communication dated 11 and 17th June, 1999, called upon the petitioner-workman to join duty on contract basis, but the petitioner-workman refused. Hence, there is no illegality in the impugned award and the present writ petition deserves to be dismissed on that count alone.

9. Moreover, the petitioner-workman declined to work on fixed remuneration. The relevant documents and material was placed before the Labour court to substantiate the fact that the petitioner was called upon to work on contract basis, but he declined the proposal, as would be evident from the statement deposed by Ram Lal Meena, who appeared as witness on behalf of the respondent-employer.

10. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

11. Indisputably, the petitioner-workman was neither appointed through any recruitment process nor any appointment order was made in his favour. The Labour Court taking into consideration the statement of claim, response filed by the respondent-employer, evidence adduced by the parties and material available on record, concluded that the petitioner-workman failed to bring on record any evidence with reference to his appointment. Moreover, the petitioner-workman himself admitted in his cross-examination that the payment was made to him by the contractor after having obtained his signatures on a receipt with revenue ticket.

12. The fact that the respondent-employer is vested with power and authority to engage employees on contract basis to carry out the work, cannot be denied. There is no evidence or any material available on record to sustain the plea of the petitioner-workman was appointed and any appointment order was even made in his favour either on temporary or regular basis as Tractor Driver. The findings arrived at by the Labour Court on the basis of pleadings of the parties, evidence adduced and material available on record, cannot be faulted for any perversity or illegality. Moreover, from the materials available on record and the specific statement made in the counter affidavit indicating that the petitioner-workman was called upon to join the duty on contract basis, has not been denied by the petitioner-workman by any subsequent pleading be it an additional affidavit or rejoinder. Further, from the evidence referred to and relied upon by the learned counsel for the petitioner-workman, it is reflected that the relevant documents by which the petitioner-workman was called upon to work on contract basis, were placed on record, but the petitioner-workman declined to work on contract basis.

13. In the case of *Heinz India Pvt. Ltd. and Another Vs. State of U.P. and Others*, (2012) 3 SCALE 607 : (2012) 5 SCC 443 : (2012) 50 VST 13 : (2012) AIRSCW 2059 : (2012) 2 Supreme 649 ; the Hon'ble Supreme Court on the issue of power of High Court of judicial review under Article 226 of the Constitution held

that the power of judicial review is neither unqualified nor unlimited, but it has its own limitations. The scope and extend of the power that is so very often invoked has been the subject matter of several judicial pronouncements within and outside the country. Referring to the passage from the Council of Civil Service Unions v. Ministry for the Civil Service: 1985 AC 374 : 1984 (3) All ER 395 (HL), it has been observed that the administrative action can conveniently be classified under three heads on which the power of judicial review may be exercised. Firstly, on the ground of "illegality"; Secondly, on the ground of "irrationality"; and Thirdly, on the ground of "procedural impropriety".

14. In case of "illegality", the decision-maker must understand correctly the law that regulate his decision-making power and must give effect to it. In the event of dispute, the conclusion would be open for judicial review.

15. In case of "irrationality", reference may be had to the "Wednesbury unreasonableness". Thus, if the decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person, who had applied his mind to the question to be decided, could have arrived at; any dispute on that count will also be open for interference in judicial review.

16. In case of "procedural impropriety", failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision, would render the conclusion open for judicial review.

17. In the case of Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd., AIR 2014 SC 2258 : (2014) AIRSCW 3157 : (2014) 6 JT 190 : (2014) 3 LLJ 478 : (2014) 6 SCALE 119 ; referring to the earlier opinion, the Hon'ble Supreme Court held that High Court can interfere with an order of the Tribunal only on the procedural level and in cases where the decision of the lower courts has been arrived at in gross violation of legal principles. The High Court shall interfere with factual aspect placed before the Labour Court only when it is convinced that the Labour Court has made patent mistake in admitting evidence illegally or made grave error in law in coming to the conclusion on facts. The High Court granting contrary relief under Article 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it.

18. By now, it is well settled law that Labour Court/Industrial Tribunal while adjudicating an industrial dispute, are vested with wide discretion and if the discretion vested is exercised keeping in view the facts and attending circumstances of the case, having regard to the pleaded facts, evidence adduced and materials available on record; it will not be open for the High Court, in exercise of writ jurisdiction under Article 226 and 227 of the Constitution of India, to interfere with the same, but for well settled principles propounded by the Hon'ble Supreme Court, for exercise of writ of certiorari while examining the legality and validity of an order/award passed by the Labour Court or Industrial Tribunal.

19. For the reasons and discussions herein above, the writ petition is devoid of

any merit. The impugned award dated 24th June, 2008, passed by the Labour Court-I, Jaipur, suffers with no illegality or error calling for any interference in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

20. The writ petition is devoid of any substance, and deserves to be dismissed.

21. Ordered accordingly.

22. However, in the facts and circumstances of the case, there shall be no order as to costs.