

(1994) 01 RAJ CK 0020
In the Rajasthan High Court
Case No : C.W.P. No. 2864 of 1989

Bhimsen

APPELLANT

Vs

Jaipur Development Authority

RESPONDENT

Date of Decision : 13-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (1994) 2 LLJ 1003 : (1994) 1 WLC 654 : (1994) 1 WLN 545

Hon'ble Judges : Mohini Kapoor, J

Bench : Single Bench

Advocate : A.N. Gupta, for the Appellant; K.N. Shrimal, for the Respondent

Final Decision : Allowed

Judgement

Mohini Kapur, J.—This writ petition has been filed by the petitioner challenging his retrenchment without following the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"). The petitioner was initially appointed as a Beldar on daily wages in the month of August, 1984. According to him, his services were orally terminated by the Secretary of the Jaipur Development Authority, Jaipur (hereinafter referred to as the "IDA") in August, 1985. No termination order was issued to him and at the same time he was not given the retrenchment compensation before his services were terminated. The matter was taken up before the Conciliation Officer but no progress could be made as the respondent did not appear and the conciliation proceedings resulted in a failure report given on 17th April, 1989. After serving a notice for demand of justice the petitioner filed this writ petition on 11th July, 1989. It may be mentioned here that the State Government referred the dispute to the Labour Court on 8th March, 1990 but none of the parties appeared before the Labour Court and ultimately in absence of any claim, the Labour Court gave a no-dispute award on 13th, July, 1991.

2. According to the petitioner he had completed more than 240 days of service

and the termination of his service without following the statutory provisions is bad in law. Besides this, the petitioner has prayed that he should be fixed in regular pay scale and should be paid other allowances as are admissible to the Class-IV employee. By virtue of an additional affidavit filed on 3rd December, 1990, the details of the places where he worked from August, 1984 to : August, 1985 have been given. He worked at the Malviya Nagar Gardens from August, 1984 to April, 1985 then again in June, 1985 and in May, 1985 he worked at 22 - Godown Circle and in July and August 1985 he worked at Malviya I Nagar site. The total working days were more than 240 days.

3. A preliminary objection was raised by the respondent stating that after failing of the conciliation proceedings the Government referred the dispute to the Labour Court and after making a reference the petitioner cannot seek the remedy simultaneously before the two forums. Subsequent answer to the reference as no dispute pending between the parties is also said to be a bar to the maintainability of this writ petition.

4. Another objection raised is that the petitioner worked under different employers and as such, he did not complete 240 days of work on the post from which he is said to have been retrenched. Lastly, it is contended that in case, he is to be reinstated then for back wages he should be directed to approach the Labour Court u/s 33C(2) of the I.D. Act.

5. As far as the facts of the case about the petitioner's working from August, 1984 to August, 1985 are concerned they are not in dispute as no reply has been filed to contest this situation. The question to be decided is whether this writ petition can be entertained after the reference to the Labour Court and whether the petitioner worked under the different employers, and, as such, he cannot be said to have been completed 240 days.

6. The learned counsel for the petitioner has placed reliance on *Radhakishan Sharma v. Rajasthan Financial Corporation* 1986 RLR 518 In this case, the contention of the respondent that the petitioner should raise industrial dispute was not accepted firstly on the ground that the writ petitions were pending for six years and secondly, because it was not in dispute that Section 25F of the I.D. Act had not been complied with. According to the learned counsel for the respondent this decision cannot be made applicable to the facts and circumstances of the present case because in the present case a reference has been made by the State Government to the Labour Court and it has been answered and the petitioner has actually availed two different remedies which is not permissible. I have considered this situation. The writ petition was filed in the year 1989 while the dispute was referred to the Labour Court much later in March, 1990. According to the petitioner he was not even aware of the reference made to the Labour Court. He had already decided to avail of the remedy by way of writ petition. In this case also, there is no contest on the part of the respondent that the provisions of Section 25F of the I.D. Act were complied with. Normally, this Court in a writ petition refuses to go into disputed questions of

facts and it is in those cases that reference of the dispute to the Labour Court is considered as appropriate remedy. When the facts are not in dispute then the situation is different. This writ petition can be entertained even in the event of the reference made to the Labour Court in view of the fact that the writ petition had been filed prior to the dispute being referred to the Labour Court.

7. Referring to a decision of this Court in *Vijay Singh v. State and Another* 1988 L I.C. 1125 it is contended that period of employment under two different units cannot be clubbed in order to give benefit u/s 25F of the I.D. Act. When the petitioner was not under one employer under one unit for more than 240 days relief was not granted to him. In this case he had worked under two different units - Assistant Engineer Parbatsar and Assistant Engineer, Deedwana - and it was held that the period of working under two different units could not be clubbed together for purposes of computing the period of 240 days. According to the petitioner he has worked for the respondent JDA for more than 240 days in year and he has given the details of the sites where he worked during the period in dispute. If the respondent wanted to raise plea that he had worked under different employers and service under different employers cannot be clubbed for calculation the total period of days for which he remained in service, the details of the different employers ought to have been given. The petitioner worked for the JDA in garden or circle, all belonged to the JDA and it cannot be said that his employment was under different employers so as to say that he did not complete 240 days of service. It may also be mentioned that the petitioner served at the Malviya Nagar Garden for more than 240 days and on basis of this service of more than 240 days the provisions of Section 25F of the I.D. Act were attracted and before terminating his services he was entitled to the notice and compensation and in absence of this procedure, his termination is against the provisions of the Industrial Disputes Act.

8. The petitioner has remained out of the employment of the JDA as long as about 9 years and it will only be proper to direct him to approach the Labour Court u/s 33C(2) of the Industrial Disputes Act for his back wages while setting aside the order of his termination.

9. This writ petition is allowed. The termination of the services of the petitioner is declared illegal and ineffective and the respondent is directed to take the petitioner in service forthwith, for other benefits to be given to the petitioner and for the back wages he shall approach the Labour Court u/s 33C(2) of the I.D. Act where the respondent is to be free to take up a plea that the petitioner was gainfully employed elsewhere during the period he was not in the employment of the JDA.