
(2014) 07 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2118/1999 and Stay Application No. 1748/1999

Director, Rajasthan Hindi Granth Academy

APPELLANT

Vs

Judge, Labour Court

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)

Citation : (2014) 07 RAJ CK 0085

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : B.B.L. Sharma, Advocate for the Appellant; J.P. Gupta, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Mohammad Rafiq, J.—This writ petition seeks to challenge the award of Labour Court, Jaipur, dated 09.12.1998 by which retrenchment of respondent-workman has been held to be illegal with a direction to petitioner-management to reinstate him in service with continuity and full back wages.

2. Undisputed facts of the case are that the respondent-workman was engaged by petitioner-management as chowkidar on 01.07.1991. His services, as per terms of reference, were terminated on 30.04.1993, which date, as per the record of the petitioner-management, has been found to be 03.04.1993. The respondent-workman approached the conciliation officer on the same day i.e. 03.04.1993. On submission of failure report, the appropriate Government made a reference of the industrial dispute vide notification dated 17.05.1995. The Labour Court answered the reference in favour of respondent-workman. Hence this writ petition on behalf of the petitioner-management.

3. Shri B.B.L. Sharma, learned counsel for petitioner-management, submitted that respondent-workman was not appointed on regular basis. He was merely engaged by oral order on daily wage basis as labourer and not as chowkidar. His

services were never terminated on 03.04.1993, as alleged by him. In fact, he voluntarily abandoned the services and stopped coming on duties. Learned Labour Court has failed to correctly appreciate the evidence put forth on the affidavits of the witnesses of the petitioner-management. Learned counsel for the petitioner-management, in this behalf, referred to the affidavits of departmental witnesses, namely, Hari Charan Gupta, Babu Lal Patni, Krishna Chandra and also the then Director of the petitioner-management (Academy) Dr. Ved Prakash. He also referred to their cross-examination. It is contended that all these witnesses stated that when the respondent-workman was discharging the duties of chowkidar in the office, theft of coolers took place. He was required to discharge his duties from 03.04.1993 in day time, but the respondent-workman refused to do so on the premise that he was additionally earning a sum of Rs. 40/- per day by working as beldar at private construction work and that he was prepared to work in day time as chowkidar with the petitioner-management only if he is paid additional sum of Rs. 40/- per day.

4. Learned counsel submitted that a note-sheet was prepared to this effect and placed before the Director of the Academy, who thereupon observed that the remuneration be paid to the respondent-workman as per the Rules. It was also mentioned that when the respondent-workman was required to discharge the duties in day time, the respondent-workman had bluntly refused and stated that the management should make alternative arrangement. The note-sheet referred to in the statement of the departmental witnesses as also in the statement of the Director the Academy, was exhibited and produced in evidence before the Labour Court. However, the Labour Court has illegally declined to accept the same. It has completely ignored the same and disbelieved the version of so large number of witnesses and preferred to accept the solitary evidence of the respondent-workman. It is submitted that respondent-workman was getting only sum of Rs. 22/- per day from the petitioner-management and at that time the wages for daily labourer in construction work was Rs. 40/- per day, this therefore was direct loss to him and naturally he insisted on assigning night duties to him in order to enable him to work in the day time as freelance labourer.

5. Shri B.B.L. Sharma, learned counsel for the petitioner further referred to Section 2(oo) of the Industrial Disputes Act, 1947, which defines the word "retrenchment" and argued that the respondent-workman had worked on contract basis and soon he stopped coming on duties on his own, the contract came to an end and this cannot be described as retrenchment.

6. Shri J.P. Gupta, learned counsel for the respondent-workman, opposed the writ petition and submitted that the story about the respondent-workman having refused to discharge the duties in day time and his insistence to work only in night shift as chowkidar, has been concocted by the petitioner-management/their witnesses to get rid of him. In the first place, the petitioner-management has not pleaded all these facts in their reply to the statement of claim and secondly the fact that the respondent-workman upon having been retrenched from service on

03.04.1993, approached the conciliation officer on the same day i.e. 03.04.1993, completely belies this fact.

7. Learned counsel for the respondent-workman, further argued that this court refused to pass any interim order in favour of the petitioner-management and after passing the award the respondent-workman was reinstated in service. The writ petition has remained pending in this court for last 15 years and for all the said time the respondent-workman has been discharging his duties but he is being paid only Rs. 60/- per day. It is prayed that he should be granted the regular pay scale at par with those who were working at the time of his retrenchment and many of his juniors.

8. On hearing learned counsel for the parties and perusing the impugned award, I find that the Labour Court was justified in upholding the contention of the respondent-workman that the respondent-workman did not abandon the job on his own and, in fact, he was retrenched. This contention of the respondent-workman is fortified from the fact that the petitioner-management in the muster-roll has put a remark that the respondent-workman on 03.04.1993 absented from the duties, but the respondent-workman approached the conciliation officer on 03.04.1993, a fact not disputed by the petitioner-management. This cannot be a mere coincidence that he approached the conciliation officer on the same day when he was retrenched from service. Had he voluntarily abandoned the job, there was no reason for him to have immediately approached the conciliation officer on the same day. The assertion made by the petitioner-management that in fact the respondent-workman abandoned the job because he was receiving only a sum of Rs. 22/- per day for the night and he was receiving Rs. 40/- by performing the work of beldar in the private construction work in open market, also has rightly been not believed by the Labour Court because no such fact that the respondent-workman refused to discharge the duties in day time citing the reason of loss of daily wages of RS. 40/- per day and that he told the petitioner-management that they should make alternative arrangement and that a note-sheet was prepared to apprise the Director of the Academy of this and that the Director thereupon observed that the remuneration/wages of the respondent-workman be paid as per the Rules. None of these facts have been pleaded in the reply to the statement of claim. Howsoever the witnesses of the management may assert, this fact cannot be taken as correct in the context of conduct of the respondent-workman, who approached the conciliation officer on the same day when he was retrenched from the service. It is not the quantity of evidence reflected by number of witnesses but the quality of evidence that would decide the issue. The appreciation of evidence made by the Labour Court on the basis of material available on record cannot be said to be either perverse or erroneous. Thus the impugned award does not suffer from any error apparent on the face of record.

9. However, considering that the matter has remained pending before this court for last 15 years and the respondent-workman has been discharging his duties

with the petitioner-management for all this time and payment of back wages was stayed, it is considered appropriate that award is modified to the extent of payment of back wages.

10. In the result, the writ petition succeeds in part and is accordingly partly allowed. The award of the Labour Court to the extent it held the retrenchment/ termination of the respondent-workman to be illegal and directed his reinstatement with continuity in service, is upheld. However, the direction with regard to payment of back wages is set-aside. The respondent-workman shall, however, also be entitled to other consequential benefits except the actual wages for the period between the date of retrenchment and the date of the award.

11. Writ petition accordingly stands disposed of. This also disposes of stay application.