
(2002) 03 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 146 of 2001

District Animal Husbandry Officer and Another

APPELLANT

Vs

Judge, Labour Court and Another

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2003) 96 FLR 532 : (2002) 3 RLW 1848 : (2002) 5 WLC 55 : (2002) 5 WLN 126

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Rakesh Sharma, for the Appellant; Deepak Goyal, for the Respondent

Final Decision : Allowed

Judgement

Madan, J.—With the consent of both the learned counsel for the parties, the writ petition has been heard finally at the order stage itself while considering the application u/s 17B of the Industrial Disputes Act, 1947 (for short "the Act"), is being disposed of by this order.

2. It is a clear case of contractual appointment, where services of the respondent-workman were terminated on expiry of the contract period. From the recital of the agreement between the parties, it was made very clear to the respondents-workman that on the expiry of six months period to which he had agreed and accepted, unless mutually extended, the term would automatically come to an end. It has not been disputed by the parties that no further extension was given after the expiry of fixed term appointment. This being the admitted position, the question of applicability of the provisions of Section 25F of the Act does not arise. The learned Tribunal had grossly overlooked this aspect of the matter while giving the impugned Award.

3. Once it is established that it is not a case of retrenchment keeping in view of provisions of Section 2(oo)(bb) of the Act, it being contractual appointment pure

and simple, the question with regard to extending any benefit either reinstatement to the respondent-workman or u/s 25F of the Act by directing payment of compensation to him would also not arise.

4. Learned counsel for the respondents has placed reliance upon the matter of Secretary, Department of Canteen Management v. Krishna Kumar Saxena (1). In my view the ratio of said decision is not at all attracted to this case being distinguishable both on law and facts. He has also placed reliance upon the decision of the Apex Court in Dena Bank v. Kirti Kumar T. Patel (2). The ratio of decision of this case also, in my view, is not attracted to the instant case.

5. I am fortified in my observations from the ratio of the decision in Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain and Others (3), M. Venugopal v. Divisional Manager, LIC of India (4) and Harmohinder Singh v. Kharga Canteen (5).

6. In M.P.H.S.N. Ltd.'s case (supra), the concerned employees were appointed by the appellant- a Government Company, on purely temporary and contractual basis in terms of the appointment order. Their services were terminable at any time without notice or assigning any reason. The order was earlier challenged by the petitioners before the M.P. High Court and thereafter in appeal before the Apex Court, wherein the Apex Court observed as under:-

"A temporary government servant does not become a permanent servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. In the present case there is no rule under which the respondents may be deemed to have become permanent by force of such rule nor they were so declared by any subsequent order of the appellant- Company to have acquired that status. On the contrary, the respondents all along continued to be temporary and according to the terms of the order of appointment their services could be terminated at any time without any notice or assigning any reasons. In such a case it is not necessary to follow the formalities contemplated by Article 311 of the Constitution. In these facts and circumstances the High Court was not right in holding that the respondents were entitled for being heard before passing the said order of termination of their services and that the order of termination was bad in law on that account."

7. In Venugopal's case (supra), the services of the probationer were terminated by the Life Insurance Corporation of India without giving any notice as per term of contract of employment for the reason that he had failed to achieve the requisite target stipulated in the contract within a time for consideration earlier before the High Court and subsequently before the Apex Court was as to whether such termination was open to challenge for want of compliance of the provisions of Section 25-F of the Act. As per terms of contract, the Corporation was entitled to refuse confirmation without giving any notice to the probationer since he has failed to achieve the requisite target as fixed by the Corporation. It was observed, that his termination effected under the Regulation 14 shall not be

deemed to be "retrenchment" within S. 2(oo) of the I.D. Act being covered exemption Clause (bb) to Section 2(ii) of the Act validating such termination under a stipulation in that behalf contained in contract of employment. The Apex Court further observed in this context that the amendment introduced in Section 48 of the Corporation Act has clearly excluded the provisions of I.D. Act so far they are in conflict with the rules framed u/s 48(2)(oo), the result whereof will be that termination of the services of the appellant shall not be deemed to a "retrenchment" within the meaning of Section 2(oo), even if Sub-section (bb) of Section 2 of the Act had not been introduced in the said section. Once the conclusion logically so arrived at is that Section 2(oo) is not attracted to such cases, in my view, there is no question of application of Section 25F of the Act on the basis of which the termination of the service of the appellant can be held to be invalid.

8. Even under the service jurisprudence, it is well settled by a Catena of decisions that the service of a probationer can be terminated after making over all assessment of his performance during the period of probation and no notice is required to be given before terminating his service.

9. In Harmohinder Singh's case (supra), the question which arose for consideration was pertaining to a matter of contractual appointment as per which the services stood terminated immediately on the expiry of the contractual period, which was challenged. It was held by the Apex Court that non renewal of the contractual period could not be claimed as a matter of right as in the event of its non-renewal would stand excluded from the definition of "retrenchment" as per Section 2(oo) of the Act.

10. The Apex Court further held in this regard that the argument on the basis of extending any benefits u/s 25F of the Act was equally misconceived. This section deals with conditions precedent to retrenchment of workman. It would not apply to para 3A because of the definition of retrenchment in Section 2(oo)(bb) of the Act, which expressly excludes "termination of the service of a workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contracts being terminated under a stipulation in that behalf contained therein." Contracts of service for a fixed term are, therefore, excluded. The Apex Court also held in *Uptron Ltd. v. Shammi Bhan*'s case (6), that the principles of natural justice are not applicable of natural justice are not applicable to such cases where the termination takes place on the expiry of the contract.

11. As a result of the above discussion, I find sufficient force and merit in the contention advanced by learned counsel for the petitioner. As regards contention of Shri Goyal learned counsel for the respondents, the same are not tenable in view of observations made hereinabove. Since the writ petition itself has been allowed, the question of extending any benefit to the respondent-workman as per Section 17-B of the Act does not arise.

12. Consequently, the writ petition is allowed. The impugned Award dated 3.12.1999 of the Labour Court, Kota is quashed and set aside. No order as to costs.