

(2012) 03 RAJ CK 0140
In the Rajasthan High Court
Case No : C. Spl. App. (Writ) No. 1423 of 2011

Dypti Narain Koli

APPELLANT

Vs

Judge, Labour Court and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 142
Industrial Disputes Act, 1947 — Section 11A, 25F, 25G, 25H

Citation : (2013) 1 CDR 20 : (2012) LLR 934 : (2013) 1 RLW 73

Hon'ble Judges : Arun Mishra, C.J.; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : O.P. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Jain, J.—Defects are overruled. Heard learned counsel for the appellant on the question of admission.

2. This intra-Court appeal is directed against order dated 27th May, 2011 passed by Single-Bench, whereby writ petition filed by petitioner-appellant, against award dated 15.12.2010 passed by Labour Court-I, Jaipur, has been dismissed.

3. Brief facts of the appeal are that State Government made a reference u/s 10(1)(c) vide Notification dated 23rd May, 2003 to the Labour Court; as to whether the workman Dypti Narain was a workman employed by non-applicants/ employer and whether he has been retrenched illegally vide., order dated 12.9.2000? if yes, to what extent, the workman is entitled for relief? The workman filed his statement of claim, wherein it was stated he was initially appointed on 22.9.1999 on the post of Class IV employee on consolidated pay of Rs. 1800 and had completed 240 days service and all of sudden his services were terminated vide order dated 12.9.2000. It was, therefore, prayed that action of respondents be declared contrary to provisions of section 25F, G & H of the Industrial Disputes Act, 1947.

4. The employer filed their written statement, wherein it was stated that the applicant was not appointed on 22.9.1999 on the post of Class IV employee. He has not completed 240 days service in a calendar year and was not appointed as per Class IV Employees Service Rules. Both the parties led their evidence.

5. The Labour Court vide its award dated 15.12.2010 answered the reference holding that workman was illegally terminated from the service vide order dated 12.9.2000, but instead of passing order of reinstatement, it was ordered that he be paid Rs. 40,000 as compensation. Being aggrieved with the said award, the petitioner filed a writ petition before Single Bench with the prayer that instead of awarding compensation, he should have been reinstated in service. Learned single Judge dismissed the writ petition. Hence, petitioner has preferred this intra-Court appeal.

6. Submission of learned counsel for the appellant is that the order of termination was found to be contrary to the provisions of the Industrial Disputes Act and award was not delayed in the present matter, therefore an order of reinstatement of petitioner should have been passed by the Labour Court instead of awarding compensation in lieu of reinstatement. In support of his submissions, he referred judgment of Hon''ble Supreme Court in Kuldeep Singh Vs. G.M., Instrument Design Development and Facilities Centre and Another,

7. We have considered submissions of the learned counsel for the appellant and examined the impugned order and award passed by Single Bench and Labour Court and other documents placed on record.

8. The Labour Court as well as Single Bench both have assigned reasons for awarding compensation in lieu of reinstatement in the present case, that applicant had not completed even one year in service. Learned Labour Court also observed that a period, of 10 years has already expired. From the facts on record, it is clear that even as per the averments made in the statement of claim, the petitioner was appointed on 22.9,1999 and was terminated from the service on 12.9.2000. Petitioner admitted that he was not given any appointment order but by oral order he was appointed. The reference was made in 2003. The award was passed in the year 2010. In these circumstances, we find that order passed by Single Bench and award passed by the Labour Court are absolutely legal and justified and no interference in the same is called for.

9. In case of Kuldeep Singh v. General Manager, Instrument Design Development & Facilities Centre and Anr., the Hon''ble Apex Court reinstated the workman as his juniors were retained in service and fresh appointments were also made after his termination, whereas facts of the present case are altogether differ different. Therefore, judgment in Kuldeep Singh's case (supra) is not applicable.

10. The Hon''ble Supreme Court in Jaipur Development Authority v. Ramsahai and another (supra) (2006 AIR SCW 5963) observed that even if it is assumed that there is violation of provisions of sections 25G and 25H of the Act, but the same by itself would not mean that the Labour Court should have passed an

award of reinstatement with entire back-wages. The Hon''ble Apex Court set aside the order of reinstatement of workman in service and awarded Rs. 75,000 as compensation in lieu of reinstatement of workman with back-wages. Para 28 of the judgment reads as under

We would, therefore, proceed on the basis that there had been a violation of sections 25G and 25H of, the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back-wages. This Court time and again had held that the jurisdiction u/s 11A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back-wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to the respondent by, way of compensation as has been done by this Court in a number of its judgments. (See *State of Rajasthan v. Ghyan Chand*, (2006) 7 SCC 755.)"

12. In *State of Rajasthan Vs. Sarjeet Singh and Another*, The Hon''ble Supreme Court held that even if it is assumed that there is violation of Sections 25G or 25H of the ID Act. but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back-wages. The Hon''ble Supreme Court in the facts and circumstances of that case, awarded Rs. 30,000 as compensation in lieu of reinstatement of workman with back-wages. Para 16 of the judgment reads as under:

In terminating the services of respondent 1, we would assume that violation of sections 25G or 25H occurred (although there is no factual basis therefore), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back-wages. We, however, although ordinarily would have set aside the impugned award and consequently the judgment of the High Court; in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the State to pay a sum of Rs. 30,000 to respondent 1. Such payment should be made within eight weeks from date failing which the same -shall carry an interest at the rate of 9% per annum. The appeal is allowed with the aforesaid directions. The parties shall pay and bear their own costs.

12. In *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, the Hon''ble Apex Court considered its earlier judgments and observed that earlier view of this Court articulated in many decisions reflected the legal position that if the termination" of an employee was found to be illegal, the relief of

reinstatement with full back-wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back-wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. Para 7 of the judgment is reproduced as under:

It is true that the earlier view of this Court articulated in many decisions reflected the le-full position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back-wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back-wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

13. In view of above principles of law laid down by Hon"ble Apex Court, it is clear that even if there is violation of section 25H and section 25G of the Act, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back-wages and compensation instead of reinstatement has been held to meet the ends of justice. In view of above discussion, we find that the award passed by the Labour Court and the order of the learned single Judge are absolutely legal and justified and no interference in the same is called for in this infra-Court appeal. The appeal, being devoid of any merit, is liable to be dismissed and is, hereby, dismissed in limine.