

(2009) 09 RAJ CK 0028
In the Rajasthan High Court
Case No : Spl. Appeal Writ No. 123 of 2002

Executive Engineer, Irrigation and Another	APPELLANT
Vs	
Raj Kumar and Another	RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 09 RAJ CK 0028

Hon'ble Judges : N.P. Gupta, J; Govind Mathur, J

Bench : Division Bench

Judgement

N.P. Gupta, J.—This appeal has been filed by the appellant against the judgment of the learned Single Judge dated 30.10.2007 dismissing the writ petition filed to challenge the award of the learned Labour Court dated 14.2.2001, whereby the learned Labour Court found the workman to have been retrenched and in violation of the provisions of Section 25F of the Industrial Disputes Act. However, the learned Labour Court considering the delay between the date of retrenchment, making reference and pendency of proceedings, while ordering reinstatement, awarded only 25% of the back-wages.

2. The learned Single Judge dismissed the writ petition as the only argument advanced before the learned Single Judge was, that the workman had approached this Court in writ petition which was dismissed in default, and therefore, it was not permissible for him to go to Labour Court after having invoked jurisdiction of this Court, which was dismissed in default. Learned Single Judge found that since the writ petition was dismissed in default, which was not adjudicated on merits, and that in labour dispute the matter is better adjudicated by Labour Court and, therefore, it was found that dismissal is not seen an impediment to the workman in approaching the Labour Court. With this, the award was found to be not otherwise assailable and the petition was dismissed.

3. Before u/s also, the same argument was repeated that the workman having approached this Court by way of writ petition, which was dismissed in default, he

could not approach the Labour Court thereafter. However, despite repeatedly asking the learned Counsel could not point out any legal authority to support the submission, and therefore, for want of necessary support, having been submitted, we are left to simply decline to accept the submission.

4. Then it was submitted that since the workman had worked only for around 2 years, and now reinstatement after more than 20 years would not be in the interest of justice, and therefore, some reasonable down cash compensation may be paid to the workman, to settle the matter once for all. We find from the order-sheets of this Court, that earlier offer was made by the learned Counsel for the workman, that the workman is ready to forego the back-wages provided he is reinstated, and his serves are treated as continued, and counted for retiral benefits, to which learned Counsel for the petitioner prayed for time to take instructions, but then, either the necessary instructions have not been received, or have not been sought; the fact remains that the learned Counsel informs us that he does not have any instructions in that regard.

5. The fact does remain, that the workman is said to have been removed in December 1988, and the matter was referred to Labour Court on 31st December 1998 i.e. after more than 10 years, the fact also does remain that the workman was initially appointed on 16.2.1987 and was removed on 1.12.1988. This coupled with the fact, that by now the workman has attained an age nearing 50. Thus, in our view, it is imminently a fit case, in the totality of circumstances, to interfere with the impugned award, by directing award of a lump-sum cash compensation in lieu of reinstatement as well as back-wages, to settle the controversy once for all.

6. In our view, considering the sequence of all the above facts, a total amount of Rs. 75,000/- would be appropriate amount to settle all claims of the workman adjudicated upon by the learned Labour Court vide award dated 14.2.2001.

7. Accordingly, the appeal is partly allowed, and in turn writ petition is also partly allowed, and the award, Annex.3 is modified, in the manner, that the workman shall be paid a sum of Rs. 75,000/-, all told, by way of cash compensation; on payment of which, all claims of the workman referred for adjudication to the learned Labour Court vide reference order dated 31.12.1998, and adjudicated vide Annex.3, would stand settled finally. The amount be paid within a period of three months, failing which the present appeal shall be deemed to have been dismissed without reference to the Court.