
(2001) 03 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4558 of 2000

Executive Officer Rajasthan State Agriculture Marketing
Board Trust

APPELLANT

Vs

Labour and Industrial Tribunal and Another

RESPONDENT

Date of Decision : 21-03-2001

Acts Referred:

Rajasthan (Regulation of Appointments to Public Services and Rationalisation of Staff)
Act, 1999 — Section 11, 9

Citation : (2001) WLC 355 : (2007) 3 WLN 224

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—A reference was initiated at the instance of respondent-workman-Amar Chand against his termination and for grant of back wages under the Industrial Disputes Act, 1947, While this matter was proceeding before the Labour Court cum Industrial Tribunal, an application was filed by the petitioner under, Sections 9 and 11 of the Rajasthan (Regulation of Appointment to Public Service and Rationalisation of Staff) Act, 1999 wherein Sections 9 and 11 lays down as follows:

Section-9, Bar to regularisation of services--No person who is a daily wage employee and no person who is appointed on an urgent temporary basis and is continuing as such at the commencement of this Act shall have or shall be deemed ever to have a right to claim for regularisation of services on any ground whatsoever and the services of such person shall be liable to be terminated at any time with due notice:

Provided that in the case of workmen falling within the scope of Sec. 25-F of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947, retrenchment compensation as may be payable under the said Act shall be paid in case of termination of services by way of retrenchment:

Provided further that nothing in this section shall apply to the workmen governed by Chapter V-B of the Industrial Disputed Act, 1947 (Central Act No. 14 of 1947).

Explanation.--For the removal of doubts it is hereby declared that the termination of services under this section shall not be deemed to be dismissal or removal from service but shall only amount to retrenchment or termination simpliciter, not amounting to any punishment.

Section 11. Abatement of claims--Notwithstanding anything contained in any judgment, decree or order of any civil court, tribunal or other authority, the claims for regular appointment of all daily wage employee and persons appointed on an urgent temporary basis, shall stand abated, and

(a) no suit or other proceeding shall be instituted or maintained in any civil court, Tribunal or other authority by the daily wage or temporary appointees against the State Government or any other employer of public services specified under Sub-causes (b) to (e) of Clause (v) of Section 2 of the regularisation of the services;

(b) no civil court shall enforce any decree or order directing the regularisation of the service of such persons; and

(c) all suits or other proceedings pending in any civil court or Tribunal claiming the regularisation of services shall abate.

2. In view of the aforesaid provision, the petitioner- management asserted that the reference before the Labour Tribunal cannot be adjudicated upon by the Tribunal. The Labour Tribunal although did not consider the application in the light of glaring fact as to whether the Rajasthan (Regularisation of Appointments to Public Services and Rationalisation of Staff), Act, 1999 could be allowed to prevail over the Central Act which is the Industrial Disputes Act, 1947 governing inter alia the termination and retrenchment of the workmen as it was a constitutional point, it rejected the application of the petitioner on the ground that Section 9 would not apply in the case of respondent- workman as the workman has only claimed back wages on account of his termination. In my view, apart from this reason, the application of the petitioner has rightly been rejected by the Tribunal for the simple reason that the reference had been initiated under the Industrial Disputes Act and hence the State Act cannot be allowed to prevail over the provisions of Central Act, 1947. The impugned order for both the reasons is not fit to be interfered with by this court. It was further submitted by Shri Goyal that even if the provisions of Sections 9 and 11 of the State Act of 1999 referred to hereinabove is considered to be repugnant to the provisions of the Industrial Disputes Act, the same is not under challenge at the instance of the respondent-workman nor it was challenged before the Tribunal. It is no doubt true that the State Act was not challenged before the Tribunal and rightly so as it could not have been challenged before the said forum but the fact remains even on a bare reading of Sections 9 and 11 of the State Act of 1999 that the same is clearly in conflict with the provisions of the Industrial Disputes

Act, 1947. It has been brought to the notice of this Court that the validity of this Act of 1999 is already under challenge before the Division Bench of this Court at the instance of some workmen which is sub-judice and an order of stay has been granted against the State Act of 1999 but the stay order is operating only in favour of those workmen who had challenged it. But since the constitutional validity of the Act of 1999 is also sub-judice before the Division Bench, this has to be considered as an additional reason for not interfering with the impugned order of the Tribunal.

3. The writ petition, under the circumstances, stands dismissed.