
(1992) 03 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4486 of 1990

Gaj Raj.

APPELLANT

Vs

Rajasthan Agricultural University

RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1992) 2 WLN 24

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—The petitioner, by this writ petition, has prayed that the order dated May 24, 1990, passed by the Registrar, Rajasthan Agricultural University, Bikaner, terminating the services of the petitioner, may be quashed and the respondent University may be directed to reinstate the petitioner with all consequential benefits.

2. The petitioner, vide order dated June 7/8, 1989, was appointed on casual basis in the scheme of Supervision and Monitoring of Creches, Department of Child Development, College of Human Science, Idai/ ur at Rs. 481.55 p. (fixed) per month on contractual basis for a period of three months from the date of joining the duty. The services of the petitioner were extended by the Vice Chancellor for a further period of three months on the same basis. The petitioner was, however, asked to work in the Administrative Office, Camp Udaipur, in place of one Shri Mangi Lal Meena. Later on, by the order dated October 18/19, 1989, the petitioner was allowed to draw the fixed salary of Rs.880/- per month with effect from July 1, 1989, on usual terms and conditions. The petitioner was asked to qualify the Job Test and was allowed to appear in the test, but he could not qualify the Job Test and, therefore, his services were terminated vide order dated May 23/24, 1990. It is against this order, terminating the services of the petitioner that the petitioner has filed the present writ petition.

3. It is contended by the learned Counsel for the petitioner that the petitioner was a "workman" and the respondent is an "industry" and, therefore, the termination of the services of the petitioner comes within the purview of the definition of the word "retrenchment" and the services of the petitioner could not have been terminated without following the provisions of Section 25F of the Industrial Disputes Act, 1947, and as the services of the petitioner have been terminated in contravention of the provisions of Section 25F of the Act, therefore, the order, passed by the respondents, is wholly illegal and deserves to be quashed and set-aside. In support of his contention, the learned Counsel for the petitioner has placed reliance over: Santosh Gupta Vs. State Bank of Patiala, , Shailendra Nath Shukla and Ors. v. Vice Chancellor, Allahabad University and Ors. 1987 Lab. IC 1607 and Satyendra Singh Rathore Vs. Rajasthan Rajya Pathya Pustak Mandal and Others, The learned Counsel for the respondent, on the other hand, has supported the order, passed by the Vice Chancellor, terminating the services of the petitioner. It is contended by the learned Counsel for the non-petitioner that the petitioner failed to qualify the Job Test and, therefore, the term, for which he was appointed, was not extended and the services of the petitioner were terminated. It is further submitted by the learned Counsel for the respondent that the services of the petitioner were terminated as a result of non-renewal of the contract after the expiry of the same. The services of the petitioner, being contractual and for a fixed period, automatically came to an end after the expiry of the term for which the petitioner was appointed. In view of Sub-clause (bb) of Clause (oo) of Section 2, terminating the services of the petitioner because of the non-renewal of the contract on expiry of the term stipulated in the agreement, cannot be deemed to be retrenchment and as such the petitioner is not entitled to claim any protection under the Act and Section 25F of the Act is not available to the petitioner. In support of its case, the learned Counsel for the respondent has placed reliance over: Indian Air Lines v. Subastian ILR 1991 211.

4. I have considered the rival submissions made by the learned Counsel for the parties.

5. The petitioner was appointed for a fixed term three months initially and thereafter this term was extended for another period of three months. The petitioner was allowed to qualify the Job Test and he appeared in the Job Test but failed to qualify the same and, therefore, after the expiry of the period of contract, for which he was appointed, the contract of service was not renewed and he was relieved from the post.

6. The case of the petitioner is, therefore, clearly falls within Sub-clause (bb) of Sections 2(oo) of the Act. This Sub-clause (bb) was added in Section 2(oo) by the Amending Act No. 49 of 1984. As a result of this amendment, the termination of the service under the contract or discharge simplicitor does not constitute "retrenchment". In the case of Santosh Gupta (supra), the Supreme Court held that the discharge of the workman on the ground that the petitioner

did not pass the test which would have enabled her to be confirmed, was retrenchment within the meaning of Sub-section 2(oo) of the Act and, therefore, the requirement of Section 25F of the Act has to be complied with. This case is not applicable in cases like the present case after the insertion of Sub-clause (bb) in Section 2(oo) of the Act as the effect of the amendment is to exclude from the ambit of the definition of the word "retrenchment" (i) the termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on the expiry of the date and (ii) the termination of the contract of employment in terms of stipulation contained in the contract of employment. This amendment has, thus, taken out from the purview of the retrenchment the cases where the services of the workman were terminated either on the expiry of the term of contract of employment or under the stipulation contained in the contract of employment.

7. In the Division Bench judgment of this Court in the case of Satyendra Singh Rathore (supra), the effect of the amendment of Section 2(oo) was not considered and, therefore, that case is, also, of no help to the petitioner.

8. In the case of Salendra Nath (supra), the workmen continued in service for about five years and the contract was renewed every three months but the job was not casual and their duties were like a regular employee and, therefore, the Hon'ble Division Bench of Allahabad High Court came to the conclusion that the case of the workman comes within the purview of "retrenchment". But in the present case, the petitioner was appointed for a fixed term and a direction was issued by this Court, directing the respondent to hold a Job Test of the employees, who were given temporary appointment. In pursuance to the direction of this Court, the Job Test was held and the person, who qualified the job test was given the appointment. The petitioner could not qualify the Job Test and as he failed in the Job Test, therefore, he was not given further appointment and his terms for which he was already appointed, was not extended and his services were terminated. The aforesaid decision of the Allahabad High Court is, thus, not applicable in the present case and the case of the petitioner clearly falls within Sub-clause (bb) of Section 2(oo) of the Act. A temporary employee has no right to hold the post and his services can be terminated without assigning any reasons, under the terms and conditions of the contract of service.

9. In a fast developing branch of industrial and labour laws, the precedent may be departed from where the issue is one of statutory construction and the basis of the legislation changes. In the present case, the effect of the amendment of 1984, by which Sub-clause (bb) was added in Section 2(oo) of the Act, has to be considered in deciding the controversy. The effect of the amendment in Section 2(oo) is that it has taken away from the purview of the "retrenchment" the cases covered by Sub-clause (bb) of Section 2(oo) of the Act. The terminations included in Section 2(oo)(bb) are, those, which are brought about either because of non-renewal of the contract of employment or on expiry of time stipulated in the agreement. As the termination of the services of the petitioner fall within the

excluded category of Sub-clause (bb) of Clause (oo) of Section 2 of the Act, and as such it will not amount to "retrenchment" because retrenchment means the termination of the services of the workman for any reason whatsoever except for expressly excluded in Section 2(oo) of the Act. The services of the petitioner were terminated as a result of non-renewal of the contract after the expiry of the same and as such it does not amount to retrenchment as it was covered by Section 2(oo)(bb) of the Act. The termination in the case in hand is a termination simpliciter and is not punitive, but it was on account of the failure of the petitioner to qualify the test and, therefore, the terms of the services of the petitioner were not extended. The case of the petitioner, therefore, does not fall within the definition of the word "retrenchment" and the provisions of Section 25F of the Act are, therefore, not applicable in the present case.

10. In the result, I do not find any merit in the writ petition and the writ petition, filed by the petitioner, is, therefore, dismissed.