
(2014) 07 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 17232/2013

Ganga Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 25F, 25G

Citation : (2014) 07 RAJ CK 0019

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.?This writ petition has been filed by petitioners against award dated 22.05.2012, whereby an industrial dispute referred to Labour Court and Industrial Tribunal, Ajmer (hereinafter referred to as "the Labour Court"), by appropriate government on 03.12.2003, was answered though in favour of the petitioners-workmen, but the Labour Court has not held them entitled to reinstatement in service and directed the respondents to pay a sum of Rs. 40,000/- as compensation in lieu of reinstatement to each of the petitioners/workmen. The terms of reference included the question whether raising industrial dispute after 13 years was proper or not? If yes, whether removal of petitioners-workmen from service by respondents on 15.02.1989 was legal and valid and if not what relief were workmen entitled to.

2. Contention of the petitioners-workmen is that they were initially engaged as Beldar on daily wages and they worked with the respondents for different spells. The petitioners were being paid Rs. 14/- per day at that time. When their employers orally threatened them to terminate their services on 04.11.2008, they filed a civil suit along with temporary injunction application on 05.11.1988. Temporary injunction application of the petitioners was dismissed on 15.02.1989 whereagainst the petitioners filed an appeal. In the appeal no stay order was passed in favour of the petitioners. Thereafter on 15.02.1989, their respective

employer illegally terminated their services. It is contended that on 11.12.1996, the civil suit was returned due to lack of jurisdiction in view of the decision of the Hon"ble Supreme Court. Thereafter, the petitioners raised an industrial dispute before the competent authority, i.e. settlement officer on 25.06.1997. After completion of the proceedings, the matter could not be sent to the State Government as the file was misplaced from the concerned department. On 06.09.2002, the petitioners again sent a reminder on the basis of which, the case was reheard and failure report dated 17.05.2003 was sent. It is further contended that removal of the petitioners is illegal, as before removal neither any notice was given, nor any retrenchment compensation was granted to the petitioners. Therefore, removal of the petitioners is in violation of provisions of Sections 25F and 25G of the Industrial Disputes Act, 1947. The workmen junior to petitioners were also working with the respondents. No seniority list was prepared and the principle of last come first go has not been complied with by the respondents. More than 100 workmen were working with the respondents but the respondents have not taken permission from the competent authority before removal of the petitioners. The petitioners had worked for more than 240 days in a calendar year. It is contended by the petitioners that the Tribunal in a similar case i.e. LCR No. 89/95, Govind Singh v. State, has directed reinstatement of the workman therein with 25% back wages. The award passed by the Labour Court in the case of Govind Singh was challenged before this Court by way of S.B. Civil Writ Petition No. 4974/1996 which was dismissed vide order dated 10.09.2002. Therefore, the petitioner ought to have been extended similar benefits as were granted by the Labour Court in the case of Govind Singh. It is therefore, prayed that the award dated 22.05.2012 passed by the Labour Court be quashed and set aside and the petitioners be reinstated back into service with all consequential benefits. Further, the services of the petitioners be also regularized with fixing their seniority.

3. The Labour Court while dealing with the question of delay of 13 years in raising the dispute observed that initially the petitioners filed civil suit before the civil court which was returned to them due to the question of jurisdiction. Thereafter, the petitioners approached the settlement officer from where their file was misplaced and the matter could not be proceeded further. The petitioner filed a reminder on the basis of which the reference was made to the Labour Court on 03.12.2003. The Labour Court further observed that the respondents/non-applicants have not disputed the aforesaid contentions raised by the petitioners regarding delay. Therefore, the Labour Court has rightly held that raising the industrial dispute after delay of 13 years by the petitioners-workmen is legal and proper.

4. The Labour Court while dealing with the question regarding working of the petitioners for more than 240 days in a calendar year has observed that Shri Nirmal Kumar, witness of the respondents, in his statement has not stated any thing about the fact that for how many days in a calendar year the petitioners worked with them. He mainly stated that the petitioners were engaged for

drought relief work and Rural Landless Employment Guarantee Scheme on daily wages basis and the said work was not of permanent nature. In this regard, the Labour Court has observed that according to Section 2(oo) of the Industrial Disputes Act, 1947, if the work is for a limited period and upon completion of said limited period, the workman is removed, then the said removal does not fall within the definition of retrenchment. The onus to prove that the petitioners worked for limited period in drought relief work was on the respondents, which has not been discharged by them as the same is not proved by the documents produced by the respondents. Apart from above, the Labour Court has further held that on 06.10.2010 and 13.10.2010, the respondents placed on record the copies of notices issued to the petitioners for retrenchment. On the one hand the respondents have taken a stand that the engagement of the petitioners was for a limited period and they do not fall within definition of retrenchment and provisions of the Industrial Disputes Act, 1947 are not applicable to the petitioners, on the other hand, the respondents themselves have placed on record copies of notices issued for retrenchment. Therefore, it has been held by the Labour Court that the petitioners were daily wages employees of the respondents. The Labour Court further held that each of the petitioners worked with the respondents for approximately for 1 1/2 years. Therefore, they worked with the respondents for a short period and 22 years had lapsed after their removal from service by the respondents. The Labour while relying upon the decision of the Hon'ble Supreme Court reported in 2011 AIR SCW Page 6747 held that the order of reinstatement in service must be passed after taking into account all the facts and circumstances of the case and in the facts and circumstances of the present case, the petitioners are not entitled to reinstatement in service and passed the award dated 22.05.2012 in terms as indicated hereinabove.

5. This Court in *Vikash Adhikari & Anr. v. Judge, Labour Court, Bikaner & Anr.* (S.B. Civil Writ Petition No. 473/2001) decided on 20th November, 2006 on consideration of the similar arguments observed as under :--

"There are certain judgments from this Court as well on the same subject matter which provides for award of lump sum compensation in lieu of reinstatement in appropriate cases. Their Lordships of Hon'ble the Supreme Court on this aspect have evolved very many guiding principles in number of judgments. Some of these judgments have been delivered in *Rolasthan Rohan v. Central Industrial Tribunal*, 1995 SCC (L&S) 142, *Gujarat State Road Transport Corporation v. Mulluamr*, 1995 SCC (L&S), *Surjeet Ghosh v. UCCO Bank*, 1995 SCC(L&S) 529, *Gorabha Corporation Marketing v. Presiding Officer*, LLR 1996 (1) 644, *Ratan Singh v. Union of India*, 1998 SCC(L&S) 170, *Dharmveer Singh v. State of Rajasthan*, WLC (Raj.) 1999, 301(DB), *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.* AIR 1979 SC 95 , *Chandu Lal Vs. Management of Pan American World Airways Inc.*, , *Sain Steel Products Vs. Naipal Singh and Others*, , *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, , *Arjun Singh & 4 Ors. v. Labour Court, Jodhpur & Ors.*, 2004 (4)

WLC (Raj.) 145 , U.P. State Road Transport Corporation Vs. Man Singh, and Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, . These cases have been followed by this Court in number of Division10 Bench judgments in Resident Engineer Housing Board, Kota v. Lakpath and Anr., reported in 2003(3) WLC (Raj.), 564, in State of Rajasthan v. Rashid Mohammad in D.B. Civil Writ Petition No. 406/2000, reported in 2004 (5) WLC (Raj.), 463, in Arjun Singh & Ors. v. Labour Court, Jodhpur, reported in 2004(4) WLC (Raj.), 145 and in Ram Niwas v. Mining Engineer (D.B. Civil Special Appeal (Writ) No. 270/2003), decided on 24th April, 2003. Principles of law which can be culled out from the aforesaid judgments are that relief of lump sum compensation in lieu of reinstatement may be awarded (i) when the nature of appointment of the workman is only casual and temporary and such appointment was not made by following due process of law(ii) when there had been delay in making of reference(iii) when a long time has otherwise elapsed from the date of alleged retrenchment till passing of the award and subsequently till deciding the matter by the Court (iv) when length of service of the workman has not been much (v) when the workman was engaged in a temporary project or scheme which has come to end (vi) when the management does not have any post or means to accommodate and continue the workman in there services. Normal rule of reinstatement can be departed in favour of the payment of lump sum compensation in any appropriate case where the matter falls in any of these broad categories."

6. Having considered the contentions of the petitioners and perused the award dated 22.05.2012 passed by this Court, this Court is of the view that the Labour Court was perfectly right in holding that looking to the short period of engagement of the petitioners with the respondents and the fact that 22 years have lapsed after discontinuation of the petitioners, they are not entitled to reinstatement in service and the Labour Court has rightly awarded just compensation of Rs. 40,000/- to each of the petitioners in lieu of reinstatement in service. There is no illegality or infirmity in the award passed by the Labour Court.

7. In view of above, there is no merit in this writ petition and the same is accordingly dismissed.