
(1992) 05 RAJ CK 0037

In the Rajasthan High Court

Case No : C.W. No. 4461 of 1991 & S.C.W. No. 4462 of 1991

Garrison Engineer MES

APPELLANT

Vs

Central Industrial Tribunal and Another

RESPONDENT

Date of Decision : 27-05-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25H

Citation : (1993) 2 LLJ 850 : (1992) 1 RLW 223 : (1992) 3 WLC 464 : (1992) 1 WLN 581

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Praveen Balwada, for the Appellant; B.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Challenge made in this writ petition is to the award dated April 20, 1991 passed by the Central Industrial Tribunal, Jaipur in relation to the termination of service of the respondent No. 2. Respondent No. 2 was engaged as a casual employee on daily wage basis on July 10, 1986. His total period of working was from July 10, 1986 to March 31, 1987 and he worked for 175 days in all. Against the termination of his service he raised an industrial dispute which was referred to the Central Industrial Tribunal, Jaipur for adjudication by the Government of India, The workman filed his statement of claim. Reply was filed on behalf of the petitioner. In evidence the workman filed his affidavit and on behalf of the petitioner affidavit of Capt. G.V.R. Murthy was filed. The witnesses were subjected to cross-examination and after hearing the parties, the learned Judge, Industrial Tribunal, passed the impugned award on April 20, 1991. He declared the termination of the service of the employee as unlawful on account of violation of Section 25F of the Industrial Disputes Act, 1947 and has directed reinstatement of the workman with consequential benefits. In doing so, the learned Judge, Industrial Tribunal has placed reliance on the affidavit of the workman along with Exhibit-1. Shri Praveen Balwada, learned counsel for the

petitioner, has argued that the workman had not completed 240 days of service in a period of 12 months preceding the date of his termination of service. Shri Balwada argued that the muster rolls, showing the engagements of the workman, were produced before the learned Industrial Tribunal but the same has been completely overlooked and by misconstruing Exhibit W.1, the impugned award has been passed. Shri B.L. Gupta, learned counsel for respondent No. 2, on the other hand argued that this Court cannot interfere with the findings recorded by the Industrial Tribunal.

2. I have carefully perused the award passed by the Central Industrial Tribunal and also gone through the original record which has been summoned by this Court. It is evident from the perusal of the record that along with the written statement the petitioner has produced muster rolls showing the period of engagements of respondent No. 2. Exhibit W.1 is dated August 19, 1989 whereas the termination of service of the workman in the instant case was brought about on March 31, 1987. In the muster rolls of the months of July, August, September, October, November and December of 1986 and January and March of 1987, it is clearly given out that the workman had rendered 25 days of service and was paid wages accordingly. No evidence has been produced by the workman to establish that he has worked from May 1, 1986. No suggestion was made on behalf of the workman to the witnesses produced on behalf of the petitioner that the workman was engaged with effect from May 1, 1986. No application for summoning of any other muster roll was moved before the Central Industrial Tribunal. The mere statement in the cross-examination of Shri Murthy that the workman has rendered 249 days of service cannot lead to the conclusion that the workman had rendered the service in a period of 12 months immediately preceding the date of termination of service of the workman. Section 25B defines the term "continuous service" and as per that definition only if a person has worked for 240 days in a period of 12 months immediately preceding the date of termination of service, then it can be said that the workman has served continuously for one year. In the absence of any evidence having been placed on record by the workman, there was little justification for the learned Judge, Industrial Tribunal to have recorded a finding about violation of Section 25H of the 1947 Act. No other point has been argued.

3. This writ petition succeeds and it is hereby allowed. The award dated April 20, 1991 is declared illegal and it is hereby quashed. Parties are left to bear their own costs.