

(2002) 02 RAJ CK 0118
In the Rajasthan High Court
Case No : Civil Writ Petition No. 631 of 2002

Girdhar Gopal Saini

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2002) 94 FLR 905 : (2002) 2 RLW 1297

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Ajay Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Madan, J.—Heard learned counsel for the petitioner at length.

2. The case of the petitioner, in short, is that he was initially appointed on 2.11.78 on a permanent post at State Bank of Bikaner and Jaipur, Branch Srimadhapur, District Sikar. Since the date of appointment he continuously worked for 162 days but without any notice and all of a sudden he was orally not permitted to mark his signature on the attendance register with effect from 21.1.1979.

3. It is further the petitioner's case that during the whole of the above period, the petitioner worked to the best of his ability and there was no complaint against him. Thereafter the petitioner was again appointed in the respondent-Bank in 1988 and he worked till 11.8.90 but thereafter he was retrenched from service without any notice. It is also the petitioner's case that prior to his retrenchment no seniority list was published by the respondent and after that persons junior to the petitioner were appointed. Ultimately, the petitioner raised a dispute before the Labour Commissioner (Central) on 19.3.96 and the Central Government vide order dated 30.5.2000 made the following reference:-

"Whether the action of the management of State Bank of Bikaner and Jaipur in

terminating the services of Shri Girdhar Gopal Saini w.e.f. 21.1.1979 and again from 12.8.90 without giving any opportunity of employment and his junior Shri Shanker Lal was employed is justified? If not, to what relief is the workman entitled and from which date?"

4. Thereafter the petitioner filed a statement of claim before the Central Government Industrial Tribunal, Jaipur on 8.8.2000, which was registered vide CGIT No. 27/2000 in which it was specifically contended that the respondent Bank had retrenched the services of the petitioner in violation of Section 25F, 25G & 25H of the Industrial Disputes Act, 1947 (for short the "the Act") as well as Rule 77 and 78 of the Industrial Disputes (Central) Rules 1957 for short "the Rules"). Since the date of his termination he is unemployed.

5. In reply, the respondent-Bank while controverting petitioner's contentions, contended inter-alia that according to its Circular dated 23.4.87 all the ex-temporary employees of the Bank were given opportunity for permanent absorption and In this respect notices were also published in important English and Hindi news papers but the petitioner did not avail the said facility inasmuch as he did not even respond to the said Circular.

6. Besides the above, the respondent-Bank has further contended that the matter was placed by the Corporation before Lok Adalat on 17.2.99 for settlement between the parties where officers and employees had gathered and through negotiations, the officers at the time of disposal of the dispute imposed some lesser punishment on the delinquent employees and resolved their disputes with the consent of the parties. The basis and the foremost object behind constitution/formation of the Lok Adalat is to settle the litigation and also to give moral support to its employee so that they could not repeat the same in future.

7. Besides the above, the respondent-Bank has further contended that the dispute has been raised with inordinate delay and hence the petition suffers from laches. In my view, since the Bank has not violated the provisions of Sec. 25F, G & H of the Act and the petitioner had worked in 1988-89 against the leave vacancy and as such, he cannot have any legal right to claim any permanency in employment.

8. It was also submitted that termination of services of temporary employee is not within the purview of "retrenchment" u/s 2(oo) the Act.

9. The learned Tribunal had framed three issues on the basis of the pleadings of the parties. In support of his claim, the petitioner filed his affidavit of which he was cross examined by the Bank. The Bank also in support of its evidence submitted affidavit of one Shri Bheem Chand Tomar, who was the then Manager (Industrial Relations) in the Bank. The learned Tribunal vide its impugned judgment and award dated 25th July, 2001 decided the dispute against the petitioner. Hence this petition.

10. The grounds taken by the petitioner while assailing the impugned Award are

that the impugned Award is wholly illegal and against the facts and law and hence deserves to be quashed and set aside. While passing the impugned Award the Tribunal has neither considered the provisions of the Act nor the Notification and Circulars issued by the Bank. The petitioner in the first phase worked only 162 days when his services were terminated on 21.1.79 while in the second phase, he was taken on duty in the year 1988 but his services were again terminated on 11.8.90. Since neither any seniority list was published nor any notice or retrenchment compensation was paid to the petitioner, the Tribunal passed the impugned Award without taking these aspects of the matter, hence the same be set aside by this Court.

11. I have examined the contentions of the learned counsel as also the findings recorded by the learned Tribunal impugned Award and also the findings recorded by the Tribunal.

12. From the perusal of the impugned Award, more particularly, in para-4, it is to be noted that the petitioner had not rendered 240 days of service even in the second phase when he was retrenched, hence, having not completed the requisite 240 days of service either in the first phase or even in the second phase, in my opinion the petitioner is not entitled to succeed. The Tribunal on due appreciation of evidence had recorded the finding that as on 12.8.90 when his services were terminated, he had not completed 240 days of service. Therefore, the learned Tribunal was perfectly justified in recording the finding that there was no violation of Section 25F & G of the Act. Hence the contention of the petitioner that there was violation of Section 25F & G of the Act is not sustainable.

13. Learned counsel for the petitioner had not allowed violation of the provisions of Rule 77 & 78 of the Rules.

14. As a result of the above discussion, in my view no interference is called for in the finding recorded by the Labour Court. Even I find no merit in the writ petition, the same is accordingly dismissed.