
(2016) 05 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Special Appeal No. 691 of 2014

Heera Singh

APPELLANT

Vs

Assistant Engineer & Another

RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25F

Citation : (2016) 2 CLR 792 : (2016) 150 FLR 859

Hon'ble Judges : Sangeet Lodha and Kailash Chandra Sharma, JJ.

Bench : Division Bench

Advocate : J. Gehlot, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against order dated 10.4.14 of the learned Single Judge of this court, whereby the writ petition preferred by the appellant questioning the legality of the award passed by the Labour Court, Bhilwara, stands dismissed.

2. The appellant raised an industrial dispute before the Conciliation Officer, stating that he was employed as Beldar with the respondents from 5.3.79 to 31.10.82, however, his services were brought to an end w.e.f. 1.11.82 without complying with the provisions of Section 25F of Industrial Disputes Act, 1947 (for short "the Act"). The Conciliation Officer submitted his failure report; the dispute was referred by the State Government vide notification dated 19.9.95 to the Labour Court, Bhilwara for adjudication.

3. The appellant submitted his statement of claim before the Labour Court, which was contested by the respondents by filing a counter thereto. The stand of the respondents was that the appellant did not work for 240 days in any calendar year and in the year preceding the alleged date of retrenchment, he had worked only for 86 days. The specific stand of the respondents was that the appellant himself abandoned the job. That apart, the objection was also raised regarding

the dispute being raised after an inordinate delay.

4. After due consideration of evidence on record, the Labour Court arrived at the finding that the factum of the appellant having worked for 240 days in the year preceding the date of retrenchment is not proved. That apart, the Labour Court observed that the dispute raised after a lapse of 13 years cannot be entertained.

5. The learned Single Judge has dismissed the writ petition observing that the appellant remained in service of the respondent during the period from 5.3.79 to 31.10.82 only intermittently. It is further observed that the appellant did not attend the duties for number of years and then abruptly raised the dispute somewhere in the year 1995. The learned Single Judge opined that raising of the dispute at such a belated stage indicates that the appellant herein abandoned the service.

6. Learned counsel appearing for the appellant contended that no limitation is prescribed for raising the dispute under the Act and therefore, the question of Labour Court declining to entertain the belated claim is not justified. Learned counsel submitted that the appellant having discharged initial burden of proving that he had completed 240 days of service in the calendar year preceding the date of retrenchment, it was for the respondents to disprove the fact by producing the documentary evidence in their possession and thus, the finding arrived at by the Labour Court is ex facie perverse.

7. It is true that the Act does not provide for limitation for raising an industrial dispute by a workman but then, the workman must avail the remedy available under the law with utmost expedition, in any case, within a reasonable time. In the considered opinion of this court, the Labour Court was absolutely justified in concluding that the dispute raised by the appellant after a lapse of 13 years is a stale claim. It is pertinent to note that the appellant while stating that he had worked with the respondents during the period 5.3.79 to 31.10.82 had not disclosed as to for how many days he had worked with the respondents in a calendar year preceding the date of retrenchment. The respondents had given complete details of the number of days the appellant had actually worked in different years. Obviously, the burden to prove the factum of continuous service of 240 days in a calendar year preceding the date of retrenchment was upon the appellant, which he has not able to prove by producing any cogent evidence on record. In this view of the matter, in the considered opinion of this court, the finding arrived at by the Labour Court, cannot be said to be capricious or perverse.

8. In view of the discussion above, the order passed by the learned Single Judge declining to interfere with the award passed by the Labour Court does not warrant any interference by us in exercise of intra court appeal jurisdiction.

9. In the result, the appeal fails, it is hereby dismissed in limine.