

(2013) 01 RAJ CK 0113

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 193 of 2002 in Civil Writ Petition No. 2312 of 1997

Hotel Mansingh, Jaipur

APPELLANT

Vs

Judge, Labour Court, Jaipur and Another

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Constitution of India, 1950 — Article 142
Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2013) 137 FLR 492 : (2013) 2 LLJ 654 : (2013) 1 LLN 796 : (2013) LLR 486

Hon'ble Judges : Narendra Kumar Jain, J; Jainendra Kumar Ranka, J

Bench : Division Bench

Advocate : Vinendra Agerwala with Mr. Manoj Goyal, for the Appellant; Rajeev Sogarwal, for the Respondent

Judgement

1. Heard learned counsel for the parties. This intra-Court appeal is directed against the order of Single Bench dated 31.10.2001, whereby S.B. Civil Writ Petition No. 2312/1997, filed by petitioner/appellant, against the Award dated 30.11.1996 passed by the Labour Court, Jaipur, has been dismissed.

2. Briefly stated, the facts of the case, are that respondent No. 2/workman Dharampal Singh Chouhan was appointed as "Steward" by the appellant/employer on 17.10.1987; he was not allowed to continue after 01.03.1988; workman approached the appropriate authority for his reinstatement under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"); the State Government made a reference vide Notification dated 14.12.90 to the Labour Court, Jaipur, as to whether not allowing the workman by the employer w.e.f. 01.03.1988 is legal and valid? If not, to what relief the workman is entitled to?

3. Learned Labour Court, vide its Award dated 30.11.1996, recorded a finding that workman worked only for 132 days, therefore, there is no violation of

Section 25-F of the Act. So far as violation of Sections 25-G and 25-H of the Act is concerned, the same is established from Exhibit W-1 and consequently, answered the reference in favour of workman and directed the employer to reinstate the workman with 50% back wages. Being aggrieved with the Award of the Labour Court, the employer filed a writ petition before the Single Bench, which has been dismissed. Hence, this intra-Court appeal has been preferred.

4. Submission of the learned counsel for appellant is that even as per the finding of the Labour Court, it is clear that workman worked with the Management only for a period of 132 days and there is a specific finding of the Labour Court that there is no violation of Section 25-F of the Act. So far as finding of the Labour Court with regard to violation of Sections 25-G and 25-H of the Act is concerned, he submitted that no details have been given by the Labour Court as to who was junior to the workman, who has been kept in service and who were the persons, who were appointed subsequently after termination of services of workman. He submitted that no specific names have been given in the Award. So far as Exhibit W-1 is concerned, learned counsel for appellant submitted that from the said list, it is not clear, as to how and on what basis, the so called workmen were kept in service or they were appointed. He submitted that unless specific finding is recorded that particular person, who was junior to workman, was kept in service in the same category or particular workman was appointed in the same category, it cannot be said to be a case of violation of Sections 25-G and 25-H of the Act. He submitted that in absence of any such specific finding, the Award passed by the Labour Court was liable to be set aside, but from the order of the Single Bench also, it is clear that no discussion was made on this point.

5. In last, the learned counsel for appellant submitted that even if this Court comes to a conclusion that finding recorded by the Labour Court was legal and justified, then in view of the fact that, the present matter is 25 years old; the workman was appointed on fixed term of three months and he worked only for 132 days, it will be just and proper, in the interest of justice, that a lump sum amount of compensation may be awarded to the workman, in lieu of his reinstatement with back wages.

6. Learned counsel for respondent supported the impugned order of the Single Bench as well as the Award passed by the Labour Court and submitted that the question relating to violation of Sections 25-G and 25-H of the Act, is purely a question of fact and since there is finding of fact recorded by the Labour Court, the same was rightly not interfered with by the learned Single Judge. He submitted that the workman placed on record a copy of Exhibit W-1, and from the same, it is clear that number of persons were kept by the employer, who were junior to the workman and number of persons were engaged subsequently, after termination of the workman, therefore, this being a question of fact, it is not open for this Court to interfere with the said finding of fact, in this intra-Court appeal. So far as awarding lump sum compensation to the workman is concerned, learned counsel for respondent submitted that if this Court comes to

a conclusion that this is a fit case for awarding lump sum amount of compensation, then a reasonable amount of compensation may be awarded to the workman.

7. We have considered the submissions of the learned counsel for the parties.

8. There is no dispute between the parties that workman was appointed on 17.10.1987 on the post of "Steward" in the appellant-Hotel and he was not allowed to work after 01.03.1988. It is an admitted fact that the workman worked only for 132 days. There is finding of the Labour Court also that workman worked only for 132 days. There is specific finding also that there is no violation of Section 25-F of the Act.

9. According to the learned counsel for appellant, the workman was engaged only for a period of three months, which was orally extended up to 29.02.1988, therefore, it cannot be said to be a case of violation of Sections 25-G and 25-H of the Act.

10. According to the learned counsel for respondent, services of workman were terminated, in violation of Section 25-G and 25-H of the Act.

11. Be that as it may, the Labour Court has recorded a finding about violation of Sections 25-G and 25-H of the Act in the present case. The finding of the Labour Court is based on documentary evidence i.e. Exhibit W-1. It is relevant to mention that employer has not cross examined on the said document.

12. In these circumstances, we are of the view that this, being a finding of fact, was not open to challenge by the employer before the Single Bench and the learned Single Judge was right in not interfering with the finding of the Labour Court in this regard.

13. Next question arises for consideration is, as to whether in the peculiar facts and circumstances of the present case, the order of reinstatement of workman with back wages, should be passed or he should be awarded a lump sum amount of compensation, in lieu of his reinstatement with back wages.

14. In State of Rajasthan Vs. Sarjeet Singh and Another, the Hon''ble Supreme Court held that even if it is assumed that there is violation of Section 25-G or 25-H of the ID Act, but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. The Hon''ble Supreme Court in the facts and circumstances of that case, awarded Rs. 30,000/- as compensation in lieu of reinstatement of workman with back wages. Para 16 of the judgment reads as under:

In terminating the services of Respondent 1, we would assume that violation of Section 25-G or 25-H occurred (although there is no factual basis therefor), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. We, however, although ordinarily would have set aside the impugned award and

consequently the judgment of the High Court; in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the State to pay a sum of Rs. 30,000 to Respondent 1. Such payment should be made within eight weeks from date failing which the same shall carry an interest at the rate of 9% per annum. The appeal is allowed with the aforesaid directions. The parties shall pay and bear their own costs.

15. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, the Hon''ble Apex Court considered its earlier judgments and observed that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. Para 7 of the judgment is reproduced as under:

It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

16. So far as facts of the present case are concerned, there is no dispute that workman was appointed in October, 1987 and he worked up to February, 1988, thus, he worked for total 132 days and it is 25 years old matter. The Award of the Labour Court was stayed by the Single Bench during pendency of the writ petition and thereafter Award of the Labour Court as well as order of the Single Bench was stayed by the Division Bench of this Court in the present appeal and in view of stay order passed by the Single Bench as well as the Division Bench of this Court, the workman has not been reinstated in service till date.

17. Therefore, looking to all the facts and circumstances of the present case, particularly the nature of appointment, period of work done by the workman and further that it is 25 years old matter, we are of the view that ends of justice will meet, in case a lump sum amount of compensation of Rs. 50,000/- (Rs. Fifty thousand) is awarded to the workman, in lieu of his reinstatement with back wages.

18. Consequently, we dispose of this special appeal and modify the Award of the Labour Court as well as the order of the Single Bench and direct that employer/

appellant shall pay a sum of Rs. 50,000/- (Rs. Fifty thousand) towards lump sum compensation to the respondent No. 2-the workman, in lieu of his reinstatement and back wages. Learned counsel for appellant prays for and is granted one month's time to make the payment of amount of compensation to the workman.