

(2025) 11 RAJ CK 1798
In the Rajasthan High Court, Jaipur Bench
Case No : Civil Writ Petition No. 602 Of 2009

Iqbal Hussain

APPELLANT

Vs

Judge, Labour Court, Kota

RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

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

Citation : (2025) 11 RAJ CK 1798

Hon'ble Judges : Ganesh Ram Meena, J

Bench : Single Bench

Advocate : Sarita Choudhary, Gunjan Chawla, Priyamvada Singh, Neeraj Batra

Final Decision : Disposed Of

Judgement

Ganesh Ram Meena, J

1. The instant writ petition has been filed by the petitioner-workman with a challenge to the award dated 02.08.2008 passed by the learned Labour Court, Kota in LCR No.46/98 whereby, statement of claim filed by the petitioner has been rejected on the ground that the petitioner has not worked for required 240 days in the preceding 12 calendar months under the respondent-employer.

2. Learned counsel for the petitioner submits that the findings of the learned Labour Court as regards not working with the respondent-employer continuously for 240 days in the preceding 12 calendar months of the alleged termination of the services w.e.f. 01.03.1996 is wholly arbitrary and contrary to the facts on record. He further submits that the petitioner was engaged by the respondent-employer as a Pump Driver w.e.f. 08.01.1995 and he worked continuously under the respondent-employer till his verbal termination made on 01.03.1996. He further submits that Up-sarpanch of Gram Panchayat, Bada Naya Gaon, Panchayat Samiti Hindoli, District Bundi vide order dated 03.02.1996 (Ex.-5) has categorically given a certificate that the petitioner-workman was doing job of Pump Driver from the month of January, 1995. He has also certified satisfactory

services of the petitioner.

3. Learned counsel also submits that in the affidavit submitted on behalf of the petitioner-workman, he has categorically stated that he was engaged on 08.01.1995 and his services were terminated w.e.f. 01.03.1996 and the said facts remained uncontroverted in the cross-examination also. He further submits that Charan Singh S/o Chhote Lal, the Assistant Engineer of PHED Department posted at Nainwa, District Bundi in his affidavit has admitted this fact that the petitioner was engaged by him under the Rural Water Scheme in the month of July, 1995 and worked upto month of January, 1996 i.e. total 7 months.

4. Learned counsel for the petitioner has also submitted and annexed the documents as Annexure-7, 8 and 9 (Ex.-19, 20 & 21 respectively) which show the fact that the petitioner has worked under the respondent-employer in the month of February, 1996 also. He further submits that even if the period admitted by the witness of the respondent-employer and the period of month of February which is proved by the documents is taken into consideration then also the petitioner has completed more than

240 days in the preceding 12 calendar months before termination. Hence, finding of the learned Labour Court as regards non-completion of 240 days is arbitrary and perverse.

5. Learned counsel further submits that in view of the Industrial Disputes Act and the fact that the petitioner has been able to prove that he has worked under the respondent-employer for a period of 240 days continuously in the 12 preceding calendar months before termination, his termination deserves to be declared unjustified and illegal and the petitioner deserves to be reinstated in service.

6. Learned counsel also submits that during pendency of the proceeding before the learned Labour Court, the petitioner has also moved an application before the learned Labour Court for summoning the record from the respondent-employer as regards working of the petitioner but the respondents did not care to submit the record as regards working of the petitioner and in such circumstances, presumption is to be drawn against the respondent-employer.

7. Learned counsel appearing for the respondent-employer, on the other hand, submits that the finding of the learned Labour Court is just and proper as the petitioner-workman has failed to establish this fact that he has worked continuously for 240 days in preceding 12 calendar months before termination. She also submits that the finding of the learned Labour Court as regards working of the petitioner with the respondent-employer is concerned with the month of February, 1996 is merely a presumption.

8. Considered the submissions made at bar and also perused the material made available on record.

9. The statement of claim was submitted by the petitioner before the learned Labour Court after the matter being referred under the provisions of Section 10

of the Industrial Disputes Act to the Labour Court where it has been stated that the petitioner-workman has worked under the respondent-employer w.e.f. 08.01.1995 and his services were terminated w.e.f. 01.03.1996 without following due process of law, though he has already completed continuous 240 days in the preceding 12 calendar months.

10. In the affidavit of Assistant Engineer, PHED Department, he has admitted the fact that the petitioner was engaged by him under the Rural Water Scheme from the month of July, 1995 to January, 1996 i.e. for a period of 7 months. If that period is calculated in days that comes to 215 days. There is evidence on record in the form of Ex.-19, 20 and 21 which show working of the petitioner under the respondent-employer in the month of February, 1996. Considering these documents, the learned Labour Court has also come to the conclusion that the petitioner-workman has worked with the respondent-employer in the month of February, 1996 also. There were 29 days in the month of February, 1996 and if 29 days are added to the admitted period of 215 days that comes to 244 days.

11. In view of the aforesaid discussion, this Court unhesitatingly can observe that the petitioner-workman has worked under the respondent-employer for a period of 244 days in the preceding 12 calendar months before termination i.e. prior to 01.03.1996.

12. In view of the aforesaid findings, the observation of the learned Labour Court that the petitioner-workman has not completed 240 days is illegal and arbitrary and the same deserves to be quashed and set aside.

13. Hence, this writ petition is allowed and the award of the learned Labour Court dated 02.08.2008 is hereby quashed and set aside.

14. Since there is violation of Section 25F of the Industrial Disputes Act, termination of the petitioner-workman w.e.f. 01.03.1996 is held to be unjustified and illegal and the same is quashed and set aside.

15. Once the Court comes to the conclusion that termination of the workman is held to be illegal and justified, the only relief which the Court can allow to workman is the reinstatement. Recently the Hon'ble Apex Court in case of Shripal & Anr. Vs. Nagar Nigam, Ghaziabad (Civil Appeal Nos. 8158-8179/2024) decided on 31.01.2025 wherein, the termination of the workman was of 2005. The Hon'ble Apex Court has ordered for reinstatement of the workman with continuity in service observing that the entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and consequential benefits such as seniority and eligibility for regularization and promotions.

16. The Hon'ble Apex Court has also laid down that a workman whose services have been illegally terminated, as a normal rule would be entitled for reinstatement. In Bharat Sanchar Nigam Limited v. Bhurumal, on the other hand, the discretion of the court in directing reinstatement with backwages in the event

of a retrenchment being declared illegal, was described in the following terms:

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground

that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

17. The petitioner is held entitled to be reinstated in service with continuity and 50% back wages. The petitioner-workman would be entitled 50% back wages upto the date of passing of this order. However, he would be entitled for full

wages in accordance with rules from the date of passing of this order.

18. Looking to the fact that termination is of the year 1996 and the order is being passed after 29 years of his termination, the Court deems just and proper to issue direction to the respondents to comply with this order at earliest.

19. Pending application, if any, also stands disposed of.

20. List this matter again before this Court after three months to see that the compliance is made.