
(2014) 04 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3951/2008

Ishwar Lal

APPELLANT

Vs

Labour Court, Udaipur

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227 — Industrial Disputes Act, 1947 -
Section 2(j), 2(s), 25F(a)

Citation : (2014) 04 RAJ CK 0046

Hon'ble Judges : Gopal Krishan Vyas, J.

Bench : Single Bench

Advocate : Shreedhar Purohit, for the Appellant; P.R. Singh, A.A.G., Dinesh Ojha and Vishal Raj Mehta, Addl. Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In the instant writ petition filed under Article 227 of the Constitution of India, petitioners are challenging the validity of the award dated 23.8.2007 (Annex. 20), whereby the learned Judge, Labour Court, Udaipur decided a reference made by the appropriate Government vide notification dated 17.9.2004 in which it is held that there is no master and servant relationship in between the petitioners and the respondent department, therefore, the question of applicability of the provisions of the Industrial Disputes Act, 1947, (for short hereinafter referred-to as "the Act") does not arise. In the writ petition, it is stated that all the petitioners were initially appointed by the Director, Vihan Society for Child Development & Education in Rajasthan, Jaipur with effect from the dates mentioned in para 2 of the writ petition. All the petitioners were allowed to work upto 31.7.2002 by the Vihan Society. Thereafter, their services were discontinued without following provisions of the Act.

2. The petitioners raised industrial dispute against their discontinuance with effect from 31.7.2002 on the ground that the Society in which they were engaged and allowed to work for number of years, is a Society registered under

the Rajasthan Societies Registration Act, 1958 and the activities of the Society and the work undertaken by the Society from the petitioners, was related to the child development and the other related work of the Society like maternal care, women's development, pre primary and primary education, children health and nutrition. The said Society was engaged to help the DPEP project of the Rajasthan Child Development Department, Govt. of Rajasthan as per two Circulars dated 4.9.2001 and 21.6.1993 issued by the Government. In the Circulars, it was specifically observed that to run the activities of the ICDS, the services of Vihan Society may also be taken. The petitioners were engaged by the Vihan Society and deployed to perform their duties in the Child Development Department by the Regional Dy. Director and Child Development Project Officer in the Lok Jumbis Janshala Project. According to the petitioners, they worked for number of years through Vihan Society in the office of the respondents but all of a sudden, their services were dispensed-with without any notice or retrenchment compensation inspite of completing 240 days in a calendar year.

3. The petitioners preferred S.B. Civil writ petition No. 2272/2004 before this court and challenged the validity of termination of service with effect from 31.7.2002 but the Coordinate Bench dismissed the writ petition vide order dt. 11.8.2004 on the ground of availability of the alternate remedy under the Industrial Disputes Act. After dismissal of the petitioner's writ petition, the petitioners approached the Conciliation Officer and after following the process, provided under the Act, the appropriate Government made reference to the Judge, Labour Court, Udaipur to decide the dispute, in which final award was passed on 23.8.2007 by the Judge, Labour Court, Udaipur and held that neither the petitioners are workmen nor there is relationship of master and servant between the petitioners and the respondent department, therefore, there is no question of applicability of the Industrial Disputes Act. In this writ petition, petitioners are challenging validity of the award dated 23.8.2007 passed by the Judge, Labour Court, Udaipur.

4. Learned counsel for the petitioners vehemently argued that the finding given by the learned Judge, Labour Court with regard to the fact that there is no master and servant relationship, is completely erroneous because although services of the petitioners were engaged by Vihan Societies but they were deployed under the Circulars, issued by the Child and Women Development Department of Govt. of Rajasthan and their remuneration was paid through Vihan Society, therefore, ultimately, the Child & Women Development Department, Govt. of Rajasthan, is the employer of the petitioners but the learned Judge, Labour court, Udaipur completely ignored the above fact for the purpose of adjudicating the controversy in question in favour of the petitioners.

5. Learned counsel for the petitioners further submits that all the petitioners completed more than 240 days' service in a calendar, therefore, being workmen, they were entitled for retrenchment compensation and notice as per the provisions of the Industrial Disputes Act at the time of their retrenchment from

service with effect from 31.7.2002 but no retrenchment compensation or notice was given by the respondents before terminating their services with effect from 31.7.2002. Therefore, the award impugned deserves to be quashed.

6. Learned counsel for the petitioners has vehemently argued that the learned Judge, Labour Court, has completely failed to appreciate that petitioners performed their duties through Vihan Society in the Lok Jumbish Project of the Government of Rajasthan and their remuneration was paid by the State Government through Vihan Society, therefore, the respondent department being an industry, was under obligation to follow the provisions of the Industrial Disputes Act before terminating the services of petitioner workmen. In the Act, there is mandatory provision under Section 25F(a) and (b) of the Act, whereby notice & retrenchment compensation is necessary at the time of termination, therefore, order of termination as well as award impugned may be quashed.

7. Learned counsel for the petitioners submits that the finding given by the Judge, Labour Court, Udaipur for not treating the petitioners as workmen, is also erroneous because petitioners were getting Rs. 1600/- as honorarium, therefore, as per Section 2(s) of the Act, they are workmen, therefore, the finding not to treat the petitioners as workmen is totally illegal, in the claim petition, it is nowhere claimed by the petitioners that they are working as supervisors. In view of above, the finding given by the Judge, Labour Court, Udaipur in not treating the petitioners as workmen, may be quashed.

8. While inviting attention towards the case of Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshkumar Harshadbhai Shah, , it is argued that for determination of the question whether a person employed in an industry, is a workman or not, not only the nature of work performed by him, is to be seen but also the terms and conditions of the appointment and the job performed by him, are relevant considerations.

9. Learned counsel further invited the attention towards the judgment of Coordinate Bench of this court in case of Veerbhadra Singh Sisodia and Others Vs. Rajasthan Council of Primary Education and Another, and submits that the Lok Jumbish Project of the respondent department is an industry and the workers appointed under the scheme of Sarva Shiksha Abhiyaan of Lok Jumbish Project through Cooperative Society, are held entitled to be absorbed in service, therefore, it cannot be said that the respondent Department is not an industry and there is no relationship of master and servant in between the petitioners and the respondents, therefore, the award impugned may be quashed and the respondents may kindly be directed to reinstate the petitioners in service with effect from the date of order of termination i.e. 31.7.2002.

10. Per contra, learned counsel for the respondents submits that there is no error or illegality in the findings given by the learned Judge, Labour Court, Udaipur because as per the petitioners also, they were engaged on fix honorarium by Vihan Society, whose services were taken by the Child & Women Development

Department in the Lok Jumbish Project. Therefore, if the petitioners were engaged by the Vihan Society, which is NGO, then obviously, the finding given by the learned Judge, Labour court with regard to non-existence of master and servant relationship does not require any interference. It is also argued by the learned counsel for the respondents that to perform the supervisory duties, the services of Vihan Society were taken by the respondent department in the Lok Jumbish Project, for which remuneration of Rs. 1600/- was paid to each petitioner, therefore, they cannot be termed as workmen as defined in Section 2(j) of the Act. The learned Judge, Labour Court, after taking into consideration the entire facts of the case, has rightly come to the conclusion that the petitioners are not workmen because they are not the employees of the respondent department. Therefore, this writ petition may be dismissed.

11. I have heard learned counsel for the parties and scanned the entire writ petition as well as considered the rival arguments advanced by the learned counsel for the parties. Undisputedly, the petitioners themselves are accepting the fact that they were engaged by the Vihan Society and the Child & Women Development Department, Govt. of Rajasthan, issued notification on 21.6.1993, whereby services of NGO, known as Vihan Society, were ordered to be taken in the Lok Jumbish Project running in Sagwara (Dungarpur), Anandpuri (Banswara), Jaswantpura (Jalore), Bhinay (Ajmer), Siwana (Barmer), Naurva (Bikaner), Chhoti Sadri (Chittorgarh) and Girwa (Udaipur) and the petitioners are not disputing the fact that they were getting honorarium from Vihan Society to perform duties in the Lok Jumbish Project and rendering services under the notification, issued by the Child & Women Development Department, Govt. of Rajasthan. In the opinion of this court, when no appointment was issued by the respondent department even in the Project known as Lok Jumbish Project and only services of Vihan Society were taken, then obviously, it cannot be said that any relationship of master and servant came into existence between the petitioners and the respondent department. The learned Judge, Labour Court, after taking into consideration the entire facts as also the fact that the services of Vihan Society were taken to perform certain work in the Lok Jumbish Project and the petitioners were members of the Vihan Society, therefore, it was not mandatory for the respondent department to comply the provisions of the Act because neither the respondent department engaged the petitioners nor terminated their services. In fact, the finding given by the learned Judge, Labour Court, is based upon sound reasons and factual aspect of the matter, for which power under Article 226 of the Constitution of India is not required to be exercised. The purpose of taking services of N.G.O. Vihan Society, was to perform some work in the Lok Jumbish Project in the area, where weaker section of the Society lives. Therefore, even if the petitioners were getting honorarium, paid by the Government to the N.G.O., they cannot be treated as workmen so as to get any benefit under the Act.

12. The judgments cited by the learned counsel for the petitioners are not applicable to the facts of the present case because according to the petitioners

themselves, they were neither appointed by the respondent department nor were engaged by the respondent department in the Lok Jumbish Project, therefore, on the basis of the above discussion, no interference is called-for in the award impugned passed by the learned Judge, Labour court, Udaipur dated 23.8.2007 (Annex. 20) because findings given by the learned Judge, Labour Court, Udaipur for all the questions referred, are based on sound appreciation of facts and law.

13. Resultantly, the writ petition is hereby dismissed.