

(2006) 05 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Special Appeal No. 425 of 2002

Jaipur Development Authority and Another

APPELLANT

Vs

Maresh Kumar and Another

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 25B(2), 25F

Citation : (2006) 110 FLR 1207 : (2007) 1 LLJ 142 : (2006) 3 RLW 2360 :
(2006) 3 WLC 475

Hon'ble Judges : Shiv Kumar Sharma, J; Prem Shanker Asopa, J

Bench : Division Bench

Advocate : Sanjay Pareek, for the Appellant; M.F. Baig, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The respondent workman (for short "workman") raised an industrial dispute which was referred to Labour Court. The workman submitted statement of claim and the appellants (for short "employer") filed written statement. Affidavits were filed by both the parties and cross examination was made. Learned Labour Court answered the reference in favour of workman holding that the workman had continuously worked for 185 days and after taking into account Sundays and other holidays, the workman had already worked for 240 days in one calendar year and his termination was violative of Section 25F of the Industrial Disputes Act, 1947 (for short "ID Act"). The workman was ordered to be reinstated in service but back wages were not granted to him. After unsuccessful writ petition the employer has preferred the instant special appeal.

2. It is contended be learned Counsel for the appellants that the respondent workman had only completed 185 days in a calendar year, therefore it was not obligatory on the part of the appellants to comply with the provisions of ID Act.

3. We find no merit in the submissions of learned Counsel. In Workmen of

American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, dealing with Sections 25F of 25B(2) of ID Act, their Lordships of the Supreme Court observed as under:-

The qualification for relief u/s 25F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Act. In view of Sub-section 2 of Section 25B the workman shall be deemed to be in continuous service if he has "actually worked under the employer" for particular period. The expression "actually worked under the employer" cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing order etc. Thus, Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workman could be said have actually worked.

4. The learned Labour Court had proceeded in its parameters and no interference was called for in view of ratio propounded in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, wherein the Apex Court observed thus:-

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

5. As a result of the above discussion, we find no substance in the instant appeal and the same stands dismissed. The appellants shall ensure compliance of the award of Labour Court within thirty days from today. No costs.