

(2012) 03 CAL CK 0091
In the Calcutta High Court
Case No : Writ Petition No. 1296 of 2011

Jeevan Ram

APPELLANT

Vs

The Lieutenant Governor and others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 10(2A), 12(5), 25F, 25G

Citation : (2012) 03 CAL CK 0091

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Gopala Binnu Kumar, for the Appellant; Santosh Kumar Mandal, for the Respondent

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India challenging the award dated July 22, 2011 passed by the learned Presiding Officer, Labour Court at Port Blair, Andaman & Nicobar Islands, in Industrial Dispute Case No.10 of 2006. By the award impugned the learned Presiding Officer, inter alia, held that the workman concerned was not entitled to get any relief.

2. Being aggrieved the workman has come before this Court with this application under Article 226 of the Constitution of India.

3. The workman was engaged as a Daily Rated Mazdoor at Rangat office of the Deputy Conservator of Forest (Slivi Culture), Port Blair. The workman stated that he was engaged as Daily Rated Mazdoor for the period between October 11, 1993 to December 31, 1994 continuously, but with artificial breaks. Therefore, he had completed 240 (two hundred forty) days of continuous service in a calendar year. Nevertheless, his service was terminated with effect from January, 1995 without following the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947.

4. Although the employer allegedly terminated the service of the workman concerned with effect from January 01, 1995, the workman concerned approached the Conciliation Officer after long lapse of seven years; he approached the Conciliation Officer only in 2002. The Conciliation Officer held conciliation meetings, but the dispute between the employer and the employee could not be settled.

5. The employer took the stand before the Conciliation Officer that there was no vacancy in the organisation to accommodate the workman concerned as a Daily Rated Mazdoor. However, the employer made an offer of re3 employment to the workman concerned on need basis. But, the proposal was not accepted by the workman concerned.

6. Consequently, the Conciliation Officer forwarded his report to the Secretary, Department of Labour, informing him that the dispute could not be resolved.

7. The workman concerned, thereafter, approached the appropriate government for a reference under the Industrial Disputes Act, 1947. The appropriate government made a reference to the Labour Court at Port Blair, Andaman & Nicobar Islands, under Sub-section (1) of Section 10 read with Subsection (5) of Section 12 and Sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, for adjudication. The schedule of reference was as under:-

Whether the termination/disengagement of Services of Sri Jeevan Ram, Ex DRM w.e.f. 1-1-1995 by the Deputy Conservator of Forest (Silviculture) Port Blair is legal and justified? If not, to what relief the workman concerned is entitled to?

8. The workman submitted its statement of claim before the Presiding Officer of the Labour Court. He stated that he was engaged as a Daily Rated Mazdoor from October 11, 1993 to December 31, 1994 with artificial breaks. Therefore, as he has completed more than 240 (two hundred forty) days of continuous service in a calendar year, his service could not be terminated without following the mandatory requirements of Sections 25F, 25G and 25N of the Industrial Disputes Act, 1947.

9. The employer, also, submitted its written statement to the claim. It was stated that the workman concerned was engaged as a Daily Rated Mazdoor on October 11, 1993 and he worked up to March, 1994. Therefore, he worked for 172 (one hundred seventy two) days. Again, he was engaged as Daily Rated Mazdoor on July 8, 1994 and he worked up to October 31, 1994. Therefore, he worked for 177 (one hundred seventy seven) days. He was engaged as a Daily Rated Mazdoor according to the requirements of the Range Office and he was disengaged only because there was no work with the Division. It was clarified that the system of engaging Daily Rated Mazdoor was on the need basis. The Daily Rated Mazdoors were re-employed in the next season. The management, always, gave preference to the old workers. The workman concerned did not turn up for the job in the next season as he opted for work elsewhere. Consequently, the employer had to engage new workers to carry out the timebound works, that

is, creation of plantation etc. which could only be done during rainy season. The case was initiated after long lapse of seven years. It was, further, stated that although he was given opportunity to work as a Daily Rated Mazdoor on need basis, but he refused to avail himself of the opportunity.

10. The workman in his deposition before the Labour Court categorically stated that he worked as Daily Rated Mazdoor between the period from February 1993 to December 1994. However, he admitted that his engagement was temporary in nature and was seasonal. He, also, stated that his work used to change from season to season.

11. The Presiding Officer of the Labour Court found, as findings of the fact, that the workman did not work for 240 (two hundred forty) days in a calendar year and, therefore, he was not entitled to any relief.

12. It was for the petitioner to establish that he had rendered more than 240 (two hundred forty) days service in a block of 12 (twelve) months. It was for him to prove and establish that he had, in fact, completed 240 (two hundred forty) days in the preceding 12 (twelve) months" period.

13. The workman was employed for seasonal work and he did not turn up in 1995 season for his engagement as Daily Rated Mazdoor. Consequently, the employer was compelled to engage some other person.

14. The finding of fact that the workman did not work for 240 (two hundred forty) days in 12 (twelve) months" period cannot be assailed before the Writ Court. While exercising jurisdiction under Article 226 of the Constitution of India it is not possible to interfere with the factual findings recorded by the Labour Court that the workman did not actually work for 240 (two hundred forty) days in the preceding 12 (twelve) months" period. The learned Presiding Officer, Labour Court, passed the order impugned on proper consideration of the evidence placed before him.

15. The workman was not engaged for through out the year. He was taken into work to carry out time bound works on the need basis. With the closure of the season he ceased to work.

16. The workman was employed for seasonal work. In the next season, he did not turn up. He had waived his right, if any, by his conduct. He could not be said to be retrenched.

17. It appears to me, this is a chance litigation. He alleged that he was retrenched in 1995. He approached the Conciliation Officer for the first time in the year 2002. Therefore, it appears to me that the explanation of the employer that he did not turn up for engagement in 1995 as he opted to work elsewhere, is plausible.

18. In the facts and circumstances of the case, I do not think that the Labour Court acted illegally and with material irregularity in the exercise of its

jurisdiction in refusing to grant relief to the writ petitioner-workman.

19. The writ petition is therefore rejected.

20. The order impugned stands affirmed. I make no order as to costs.