

(1996) 03 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5075 of 1992

Kailash Chand Ajmera

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 1 WLN 225

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.L. Tibrewal, J.—In this petition under Article 226 of the Constitution of India, the petitioner challenges termination of his service as Class-IV employee. The termination is being challenged to be in violation of the mandatory provisions of Section- 25F of the Industrial Disputes Act (hereinafter to be referred to as the Act.)

2. Normally, this Court is reluctant to decide disputed questions of fact in writ jurisdiction keeping in view that the workman has an alternative remedy under the Act. However, In the present case, from the pleadings of the parties it is clear that the petitioner had worked for more than 240 days in a calendar year preceding his termination and admittedly, the provisions of Section- 25F of the Act have not been complied with, as such, it is just and proper to decide this petition on merits.

3. In brief, the petitioner's case is that he was first time appointed on 15th April 1989 as Class-IV employee in the office of respondent No. 3 and he continuously worked there upto the end of January 1990 on daily wages at the rate of Rs. 14/- This fact is not denied by the respondents that the petitioner worked from 15th April 1989 to January 1990 on daily wages as Class-IV employee in the office of respondent No. 3.

4. The further contention of the petitioner is that in February 1990, though he had worked in the same office, payment was made to him in the name of one Prem Prakash and this was done to show the break in his service. However, this fact is denied by the respondents in their reply.

5. The petitioner's case further is that thereafter, from March 1990 till July 1991 he worked in his own name without any break and his services were terminated orally from March 26, 1992.

6. The case of the respondents may be summarised as detailed out in para No. 6 of the reply which reads as under:

That the contents of para 6 are not admitted as they are totally misconceived and baseless. So far as Schedule-A is concerned it is stated that the petitioner worked from 15th April, 1939 to January 1990. Thereafter, there was a break in service for the month of February, 1990. He again worked from March, 1990 to November, 1991 and then wilfully absented himself without any information from December, 1991 to February 16, 1992. On 17th February, he was again allowed to join on humanitarian grounds and worked till March, 1992.

7. Then para- 10 of the reply reads us under:

That the contents of para 16 are admitted to the extent that the petitioner has worked for more than 240 days on daily wage basis.

8. Thus, from the reply of the respondents also it stands proved that the petitioner had worked for more than 240 days in a calendar year preceding the date of his termination. However, no material was produced before me to show that the petitioner absented thereafter or his absence was willful or that any action was taken against him for his absence.

9. On the contrary, from Annexure-1 it appears that he has been paid wages for the months of December 1991 and January 1992. It is not disputed before me that before terminating services of the petitioner, the provision of Section 25F of the Act has not been complied with. In view of this, it can be safely held that termination of the petitioner's service is invalid and void.

10. The next question which arises for consideration is, as to what relief should be given to the petitioner ? .

11. The petitioner has filed an undertaking before this Court relinquishing his claim of back wages for the period for which he did not work. From the reply of the respondents also it appears that the petitioner was gainfully employed during the said period.

12. Consequently, this petition is allowed. The termination of petitioner's service is held to be invalid and void. The respondents are directed to reinstate the petitioner as Class-IV employee within a month from today. From the date of reinstatement, the petitioner shall be paid minimum of the pay scale payable to Class-IV employee and his case for regularisation shall be considered in

accordance with law. The petitioner shall also be entitled to get costs of this litigation which is quantified as Rs. 1,000/-.