
(2001) 10 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Special Appeal No. 772 of 2001

Karan Singh Saktawat	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes (Central) Rules, 1957 — Rule 77
Industrial Disputes Act, 1947 — Section 2, 25, 25

Citation : (2002) 92 FLR 431 : (2002) 1 RLW 54 : (2002) 1 WLN 282

Hon'ble Judges : A.R. Lakshmanan, C.J.; Bhagwati Prasad, J

Bench : Division Bench

Advocate : R.S. Saluja, for the Appellant;

Final Decision : Dismissed

Judgement

Lakshmanan, C.J.

(1). This appeal is directed against the order dated 14.8.2001 passed by Shri Rajesh Balia, J. in S.B. Civil Writ Petition No. 1085/95, dismissing the writ petition.

(2). The writ petition was filed by the appellant questioning the correctness of the termination order. According to him, he has not been terminated and he continues to be in service of the Government of Rajasthan so as to be entitled to all the benefits consequential thereto. He also sought the relief of declaration to declare the purported termination of service as illegal.

(3). According to the appellant, he was appointed as a Patwari in Irrigation Department in Som Kamla Amba Project on 22.10.91 and he continued to work in the aforesaid capacity till 3.3.1993 i.e. the date when his services were terminated by oral order. After the services were terminated the appellant through his Union invoked conciliation proceedings by making representation to the Conciliation Officer, Labour Department Udaipur on 3.6.1993. A reply was

filed to the conciliation proceedings and a rejoinder was also submitted by the appellant through his Union. However for the reasons best known to him the Conciliation Officer dropped the conciliation proceedings. He issued a notice of demand of justice on 17.12.94 (Anx.4) and his request for revision of pay of the workman of the work charged employees as per the Rules of 1987 was also not granted. According to Shri R.S. Saluja, learned counsel appearing for the appellant, he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and the department is an industry within the meaning of Section 2(j) of the Act and the appellant's services have been terminated without complying with the provisions of mandatory requirement of Section 25F(a) and (b) of the Act. It is further averred in the petition that before effecting termination of service of the appellant no seniority list as envisaged by Rule 77 of the Industrial Disputes Rules had been prepared by the Respondents.

(4). The writ petition was resisted by the respondents. According to the respondents, the appellant has not completed service of 240 days within the meaning of Section 25B of the Act as the appellant has served in different Sub-Divisions and the different Assistant Engineers and he has not put in 240 days in a year under one employer. It is submitted that the appellant is not entitled to any relief.

(5). Mr. Saluja, learned counsel for the appellant submitted that:

(a) The termination of the appellant is manifestly illegal;

(b) It is incorrect to say that the appellant has not put in 240 days in a year under one employer;

(c) Even assuming that the services rendered by a person under different appointing authorities cannot be clubbed together for the purposes of counting 240 days services under an employer, it is submitted that even on this assumption the appellant cannot be deemed to have completed 240 days" service under an employer;

(d) It is submitted that an employer is one who pays to the employee for the work done by him. It is only for convenience that powers of appointment are delegated to the subordinate authorities by the employer. Merely because a particular authority is vested with certain financial powers to disburse the pay or exercise powers of disciplinary authority etc., the situation does not change;

(e) Therefore, total service rendered by the workman whether under one authority or other have to be taken together for the purpose of Section 25F (a) and (b) of the Act and the contrary view taken by the respondents is not proper.

(6). We have perused the reply filed by the respondents and given our thoughtful consideration to the above points raised by Shri Saluja. We are unable to countenance the submissions made by the learned counsel as mentioned in paragraphs supra. It is not in dispute that the appellant was allowed to discharge

his duties as a work-charged employee-Patwari on purely temporary daily wages basis @ Rs. 40/- per day by the Assistant Engineer, Som Kamla Amba Project, Aspur Branch, Sub Division II, District Dungarpur for the period commencing from 22.10.91 to 31.12.91. The appellant was allowed to discharge his duties as work-charged employee purely on temporary and daily wages basis @ Rs. 40/- per day by the Assistant Engineer, Som Kamla Amba Project(Distributory) Sub Division III, Aspur, Assistant Engineer, Irrigation, Som Kamla Amba Project, Aspur Branch Sub Division I, Aspur and the Assistant Engineer, Irrigation, Right main Canal, Sub Division Som Kamla Amba Project, Aspur for the period commencing from 1.1.92 to 29.2.92, 1.3.92 to 31.5.92 and 1.6.92 to 31.7.92 respectively. It is the specific contention of the respondents that every sub division of Irrigation Department is separate and independent Unit and every Assistant Engineer of the Irrigation Department is having power or competence to permit or allow any person to discharge his duty as work-charged employee temporarily on daily wages basis. Lastly the appellant was allowed to discharge his duties as work-charged employee-Patwari purely on temporary basis @ Rs. 55/- per day by the Assistant Engineer, Irrigation, Left Main Canal, Som Kamla Amba Project, Sub Division, Aspur for the period 27.10.92 to 31.12.92 from time to time and lastly vide order No. 402-7 dated 1.12.92 and order No. 611 dated 15.12.92. Thus it is seen that the appellant was permitted lastly to discharge his duties for a fixed period upto 31.12.92 and on fixed wages purely on temporary daily wages basis vide orders dated 1.12.92 and 15.12.92 on the specific condition that the services of the appellant would stand automatically come to an end or terminated on the expiry of the fixed period i.e. 31.12.92 or by efflux of time. The appellant petitioner had also agreed to this condition and joined the duties which is evident by perusing the order No. 402-7 dated 1.12.92 and No. 611 dated 15.12.92 passed by the Assistant Engineer, Irrigation, Left Main Canal, Som Kamla Amba Project, Sub Division, Aspur. The copies of the orders dated 1.12.92 and 15.12.92 have been filed along with the reply to the writ petition and marked as annexures R/1 and R/2 and we have perused the same. Since the term of the appellant was for a fixed period upto 31.12.92 and no further time was extended, the appellant, in our opinion has no legal right to continue in the post in question. There was no renewal of contract of service and services of the appellant had automatically come to an end on account of the non renewal of contract of service on 31.12.92. The provisions of the Industrial Disputes Act and in particular Section 25F do not apply to the instant case and, therefore, there is no necessity for the respondents to comply with the provisions of law laid down u/s 25F of the Act. It is also noteworthy to mention that the appellant was not allowed to discharge his duties as work-charged employee on daily wages basis between the period commencing from 1.1.93 to 3.3.93 nor he was paid wages by the respondents. Likewise the appellant was not allowed or permitted to discharge his duties as work-charged employee by any Assistant Engineer subordinate to the Executive Engineer, Central Division, Som kamla Amba Project, Dungarpur during the period 1.8.92 to 26.10.92. In other words, the appellant has not served at all during the period 1.8.92 to 26.10.92.

Consequently the appellant was allowed or permitted to discharge his duty as work- charged employee-Patwari, as under:

S.No.

Period

Days

Asstt. Engineer as per Branch Canal, Aspur.

1.

22.10.91 to 31. 12.91

61

Sub-Division 11 Aspur

2.

1.1.92 to 29.2.92

51

Distributory Sub-Division 11. Aspur

3.

1.3.92 to 31.5.92

78

Aspur Branch Canal Sub Division 1, Aspur

4.

1.6.92 to 31.7.92

52

Right Main Canal Sub-Division, Aspur

5.

27.10.92 to 31.12.92

47

Left Main Canal Sub Division, Aspur

From a perusal of the above chart it is evident that the appellant has completed only 191 days between the period 22.10.91 to 31.10.92 during one calendar year excluding 51 days (1.1.92 to 29.2.92) where the appellant worked as Patwari with the Assistant Engineer Irrigation, Distributory Sub Division III.

(7). A perusal of the entire records goes to show that the appellant was

permitted to allow to discharge his duties as a casual labour on daily wages basis and the services of the appellant has automatically come to an end by efflux of time, it is also further seen and proved that the appellant has not completed 240 days" in service. As such the respondents was not statutorily obliged to comply with the mandatory provisions of Section 25 of the Act. It is also proved by records that all the Sub Divisions are different Sub Divisions under different Divisions and are independent units.

(8). It was also argued by Shri Saluja that there is violation of Articles 14 and 16 of the Constitution, inasmuch as while services of the appellant have been terminated, the services of other persons of the same categories in other Units or Projects which are lesser than the services rendered by the appellant have not been terminated. But the appellant, in our view, has miserably failed to establish the said submission. The appellant has not submitted any particulars or details in regard to the name of such persons. Hence this contention has to fail.

(9). We are of the opinion that the judgment of the learned Single Judge is correct and the learned Judge is right in placing reliance upon the decision rendered in *Workmen of Straw Board Manufacturing Company Ltd. v. Straw Board Manufacturing Company Ltd.* (1), wherein by applying the test of functional integrality while considering the provisions relating to retrenchment in the context of two factories situated in the same compound and owned by the same Company were held to be distinct separate establishment notwithstanding unity of the employer and unity of financial management because of absence of functional integrality in the sense functioning or working of one was not dependent on the other notwithstanding unity of ownership and unity of management. There is no dispute before us that if different Sub-Divisions of the Irrigation Department are considered to be separate establishment the appellant workman does not fulfil, the criterion of continuous employment for one year or more on an establishment under an employer for the purpose of invoking the provisions of Section 25F of the Act.

(10). For the foregoing reasons we are of the opinion that the appeal has no merits and the appeal fails and is hereby dismissed.