
(2015) 05 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2385 of 2001

Kayam Singh

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

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

Citation : (2015) 05 RAJ CK 0041

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : R.S. Saluja, S.S. Singh and Anita Gehlot, for the Appellant; K.D. Singh, Deputy G.C., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jaishree Thakur, J.—The present writ petition has been filed under Article 226 of the Constitution of India challenging the award of the Labour Court dated 24.4.1999.

2. Brief facts of the case are that the petitioner was appointed in the respondent-Department on 14.11.1989. After having worked in the said Department, his services were terminated by oral order dated 11.3.1991. Since the services were terminated in violation of the provisions of the Industrial Disputes Act, 1947 (for short "the Act of 1947"), the petitioner raised an industrial dispute by approaching the Conciliation Officer. The matter could not be resolved and, thereafter, the Appropriate Government referred the matter to the Labour Court at Jodhpur. Before the Labour Court, Jodhpur, the petitioner submitted his statement of claim stating therein that he had completed more than 240 days of service in a calender year and his services were terminated without following the requirements of Chapter 5 of the Act of 1947. The respondent-Department filed its reply and thereafter, evidence was adduced. After hearing the parties, the Labour Court gave its award dated 24.4.1999 holding that the petitioner has

completed more than 240 days of service in an year and also came to the conclusion that there was non-compliance of Section 25 of the Act of 1947 while terminating the service of the petitioner, while negating the plea of the petitioner-workman that persons junior to him had been retained in service. Though the Labour Court came to the conclusion that the petitioner had been illegally retrenched, it directed that a sum of Rs. 15,000/- be paid as compensation to the petitioner-workman instead of ordering reinstatement. Aggrieved by the award, the petitioner filed the present writ petitions.

3. Learned counsel appearing for the petitioner has relied upon the judgment reported as *Jasmer Singh Vs. State of Haryana* (2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 to contend that in case the workman has worked for more than 240 days in a calender year, any termination order passed will be void ab initio for non-compliance of Section 25 of the Act of 1947. Resultantly, the workman would be entitled to reinstatement with full back wages. The counsel appearing for the petitioner has argued that after finding and recording that the workman had completed 240 days in a calender year and also there was non-compliance of Section 25F of the Act of 1947, he should be reinstated with full back wages instead of giving compensation in lieu thereof.

4. Per contra, the counsel appearing for the respondents has argued that the award of the Labour Court was just and after appreciating the evidence on record, the Labour Court had rightly compensated the workman.

5. I have heard the counsel for the parties and pursued the record of the case.

6. Admittedly, the respondent-workman had worked for a period of 240 days which was inclusive of Sundays and Holidays. The labour court noticed that the petitioner had worked in the year 1989-1991 and since then a period of eight years had since lapsed. The Labour Court after considering various factors for calculating the compensation, such as nature of work, wages which the workman was getting, service tenure, observed that if the service of a workman is being terminated without complying with the provisions of the law, then he would be entitled to get approximately Rs. 15,000/- as compensation. This compensation was assessed keeping in mind that the service of the workman was of one year only.

7. Apart from the judgment which has been cited as *Jasmer Singh* (supra), the Hon"ble Supreme Court on several occasions has gone into the question whether or not the ordinary principle of grant of reinstatement with full back wages should be a norm when the services of a daily wager has been illegally terminated without applying the provisions of Chapter V of the Industrial Disputes Act 1947. In the judgment reported as *B.S.N.L. Vs. Bhurumal*, (2014) 2 ABR 235 : (2014) 1 AD 467 : AIR 2014 SC 1188 : (2014) 140 FLR 901 : (2013) 15 JT 611 : (2014) LabIC 1093 : (2014) 1 LLJ 260 : (2013) 15 SCALE 131 : (2014) 3 SCJ 195 : (2014) 3 SCT 49 : (2014) 1 SLJ 293 decided on 11.12.2013,

the Hon"ble Supreme Court had occasion to go into a question whether there was any irregularity in the award passed where the Tribunal after holding that there was violation of the provisions of Section 25F of the Act of 1947 and the retrenchment was held to be illegal had ordered reinstatement. The High Court had affirmed the order of the Tribunal. The Hon"ble Supreme Court posed a question as to whether the order of reinstatement should automatically follow in a case where an engagement of daily wager has been brought to an end in violation of Section 25 of the Act of 1947. It was held as under:-

"It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

It was also held that ordinary principle of grant of reinstatement with full back wages should not be applied mechanically in all cases. It was further held that:-

"Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization."

8. The above noted judgment has been subsequently followed in several other cases, namely, Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 and Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, AIR 2014 SC

1848 : (2014) AIRSCW 1383 : (2014) 3 JT 415 : (2014) 2 LLJ 54 : (2014) 2 SCALE 399 : (2014) 7 SCC 190 : (2014) 3 SCJ 451 : (2014) 2 SLJ 231 .

9. In the present case, the workman had worked for a period of 236 days from February, 1989 till January, 1991 and benefits of holidays and National holidays were given to him to complete a period of 240 days. The services were terminated as far back as in the year 1991 and a period of more than 24 years have since lapsed. Moreover, even the Labour Court had held that the workman being only a daily wage worker, could be compensated in terms of money since a period of eight years had since lapsed from the date of the termination to the date of passing of the award. The judgments of the Co-ordinate Benches of the Hon"ble Supreme Court have held that reinstatement with back wages is not automatic when the termination of daily wage worker is found illegal because of procedural defect, namely, in violation of Section 25F of the Act of 1947.

10. The judgment of Jasmer Singh v. State of Haryana and Anr., does not take note of the judgment rendered in B.S.N.L. v. Bhurumal (supra) and the settled issue that automatic reinstatement should not be the norm and hence the same is distinguishable.

11. Therefore placing reliance upon the judgments of B.S.N.L. v. Bhurumal, Hari Nandan Prasad and anr. v. Employer I/R to Management of FCI and anr., Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh (supra), I find that there is no infirmity with the award passed by the Labour Court who had awarded compensation of Rs. 15,000/- in lieu of reinstatement and back wages. However, this amount of Rs. 15,000/- is enhanced to a sum of Rs. 50,000/-. The said amount be released within a period of three months from the date of receipt of copy of this order. In case the said payment is not made within the period as stipulated above, the employer shall pay interest @ 9% per annum from the date of the order till the date of actual payment.

12. With the above observations, the writ petition is disposed of with no order as to costs.