
(2009) 02 RAJ CK 0023
In the Rajasthan High Court

Kriya Vikriya Sahakari Samiti

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2010) 3 LLJ 504 : (2009) 4 RLW 3271

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prem Shanker Asopa, J.—Heard learned Counsel for the petitioner.

2. By this writ petition the petitioner has challenged the award dated 01.11.1994 (Annexure/5) whereby the respondent-workmen has been reinstated with full back wages and other consequential benefit with continuity of service on account of the violation of Section 25F of the Industrial Disputes Act, 1947.

3. The undisputed facts of the case are that the respondent-workman was appointed on 27.03.1983 and his services have been terminated on 06.07.1984 by invoking the clause of probation of not satisfactory work during the probation as mentioned in the agreement dated 03rd of August 1983 (Annexure/1).

4. Counsel for the petitioner submits that the case will not be of retrenchment as the same is covered by exception 2(bb) of Section 2(oo) of the Industrial Disputes Act, 1947, on account of the fact that the services of the respondent-workman have been terminated under a stipulation in the contract.

5. No-one appeared on behalf of the respondent-workman.

6. I have considered the aforesaid submissions of the petitioner and gone through the contents of the writ petition.

7. Before proceeding further it is relevant to refer the unamended Section 2(oo)

of the Industrial Disputes Act, 1947 which is as follows:

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health;

8. The amended Section 2(oo) (bb) as on 18.08.84 are as follows:

57 [(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not includes -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

58 [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

56. Subs. By Act of 36 of 1964, Section 2, for "Schedule" (w.e.f. 19.12.1964)

57. Ins. By Act 43 of 1953, Section 2 (w.e.f. 24.10.1953)

58. Ins. By Act 49 of 1984, Section 2 (w.e.f. 18.8.1984).

9. It is settled position of law that the said amendment is not retrospective and the same is prospective, therefore, the Labour Court which has placed reliance on the unamended part of Section 2(oo) of Industrial Disputes Act, 1947 has not committed any error law and the present case is covered by the judgment of Santosh Gupta Vs. State Bank of Patiala,

10. In view of the above, the labour Court has not committed any error of law and the writ petition has no force and the same is dismissed.