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**(2004) 01 RAJ CK 0010**  
**In the Rajasthan High Court**  
**Case No : .S.A. No. 923 of 2002**

Kusheshwar Mandal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 16-01-2004

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25B, 25B(2), 25F, 25G

**Citation :** (2005) 2 LLJ 87 : (2004) WLC 670

**Hon'ble Judges :** Rajesh Balia, J;O.P. Bishnoi, J

**Bench :** Division Bench

**Advocate :** S.N. Sharma, for the Appellant; C.S. Kotwani, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajesh Balia, J.—In the facts and circumstances of the case, the preparation of paper book is dispensed with. Heard learned counsel for the parties.

2. This appeal is directed against the judgment of learned single Judge dated April 3, 2000. The appellant has raised an industrial dispute about termination of his services by oral order of the Assistant Engineer, Gulabpura with whom he was employed w.e.f. May 1, 1994, alleging that he has continuously served under the same employer for more than 240 days and he be deemed to be in continuous service in the establishment under the same employer for a period of one year and, therefore, his retrenchment could take place only in accordance with Sections 25-F and 25G of the Industrial Disputes Act, 1947 and not otherwise.

3. According to the claim petition filed by appellant as well as the reply filed by the respondents, it was clear that the appellant was employed as daily rated on work charged establishment under the Irrigation Department and under the work charged establishment as a daily rated, he was not employed for the entire period during which he has alleged to have served at the same place.

4. According to the position as emerge on admitted facts, the appellant has never worked in October, 1992, November 1992, December 1992, January 1993,

February 1993, September 1993, October 1993, November 1993 and February 1994 under Assistant Engineer, Sub-Division, Gulabpura. He has not worked either at Gulabpura or Sahapura in March 1993 or August 1993. From April to July 1993, he has worked for sometime under the Assistant Engineer, Sub-Division, Sahapura. The Labour Court found that since the appellant was not working on the same establishment, the entire period of his services rendered on both the places cannot be clubbed together for the purpose of computing the period of 240 days to find him in continuous employment in the industry under the same employer in terms of Section 25-F of the Industrial Disputes Act. Finding that he has not worked 240 days in preceding 12 months of the alleged date of termination, it was held that the appellant is not entitled to any relief as retrenchment cannot be said to be invalid.

5. The respondent has clearly claimed that the appellant was a daily rated workman and was employed only as and when he has offered himself for employment and on having additional work available there. Thus, the appointment at two different places by two different employers, cannot be said to be working continuously under the work charged establishment of the Irrigation Department. This contention found favour with the Tribunal and the claim of the appellant was rejected. The writ petition filed by the appellant-petitioner was also dismissed on the same ground. Hence, this appeal.

6. It is not in dispute that the appellant has worked partly under the Assistant Engineer, Gulabpura and partly under the Assistant Engineer, Sahapura. Both are subordinate to Superintending Engineer, Irrigation Circle, Bhilwara. Section 25-F does not operate unless at one establishment under the same employer the workman has completed the requisite period of continuous service so as to avail the benefit of said provisions. Apparently, if two places of employer where the appellant, has sought employment on the availability of the work are not treated as part of the same establishment, the appellant is not entitled to any relief.

7. In the present case, it is not the case of the appellant also that he was employed at Gulabpura and, thereafter, as and when he was required to work at different places he was transferred by the competent authority for discharging functions at elsewhere of the same department. As a matter of fact, it is a clear case that the appellant has himself sought employment at two different places at different times where the work was available. This fact is apparent from the circumstances that during the period of March 1993, the appellant was not employed anywhere. Before March 1993, he was employed at Gulabputra and in April 1993, he sought employment at Sahapura. Apparently, this was not by an order of any controlling officer. It also goes to show that there is no integrity in the employment of the workman, at Sahapura or Gulabpura but both come as independent employment. The name in muster roll is also entered by concerned Assistant Engineer under whom the work was going on. Thus, for the present purpose and in the facts and circumstances of the case, the employment of the appellant was not under the same employer.

8. Apart from the aforesaid the appellant's case apparently does not fall u/s 25-F read with Section 25B as he was not in continuous service for a period of more than one year but his case is sought to be governed by Sub-section (2) of Section 25B for the purpose of computing the period of actual services rendered by a workman in order to constitute continuous service of a period required u/s 25-F. The requirement u/s 25B is that, the workman during the period of 12 calendar months immediately preceding the date with reference to which calculation is to be made must have actually worked in the industry under the same employer for not less than 240 days, in case the workman is not employed below ground in a mine.

9. In the latter case, if he has actually worked for 180 days, it will satisfy the condition.

10. The petitioner has sought relief under this provision. The date with reference to which the period of one year in continuous service is to be counted, in this case is May 1, 1994, the date on which termination of service took place as per reference made and claim raised by the workman. Counting the period backward therefrom, the appellant should have actually worked for 240 days or more days between May 1, 1993 to April 30, 1994. The service prior to May 1, 1993 cannot be computed for the purpose of computing the actual working in immediately preceding 12 months from the relevant date. In the present case counting the period during which the appellant rendered his service in 12 calendar months immediately preceding May 1, 1994, on his own showing he has not actually, worked for 240 days.

11. In view thereof, we do not find any merit in this appeal and the same is hereby dismissed.

12. No order as to costs.