

**(2018) 04 RAJ CK 0118**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 2646 of 2018**

**Manager, Marudhara Mortos @APPELLANT@Hash Mool Singh**

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**Date of Decision :** 04-04-2018

**Acts Referred:**

Industrial Dispute Act, 1947 — Section 25F, 25G, 25H  
Constitution of India, 1950 — Article 227

**Citation :** (2018) 04 RAJ CK 0118

**Hon'ble Judges :** ARUN BHANSALI, J

**Bench :** Single Bench

**Advocate :** Muktesh Maheshwari

**Final Decision :** Dismissed

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## Judgement

This writ petition has been filed by the petitioner aggrieved against the award dated 10/1/2018 passed by the Labour Court, Udaipur, whereby, the reference dated 21/8/2011 made by the appropriate Government has been answered in the manner that the action of the petitioner in terminating the services of respondent workman on 17/6/2010 was not justified. A direction to reinstate the workman has been made and from the date of Notification i.e. 11/8/2011 25% amount of the back wages has also been awarded.

The respondent workman joined the service of petitioner on 6/1/2003 as a mechanic. It is claimed that after gaining experience, the respondent for monetary benefits started taking freelance job and started remaining on leave and/or absented randomly affecting the business of the petitioner. It is alleged that the respondent was warned and advised from time to time, however, his attitude did not change and ultimately his services were terminated on 17/6/2010. The respondent workman raised industrial dispute, wherein, it was submitted that he is willing to work but did not commit anything about his attitude/behaviour and the petitioner offered to take him back

provided he corrected himself. As the matter could not be settled and conciliation proceedings failed, the dispute was referred by the appropriate Government to the Labour court.

The Labour court, after the evidence was led by the parties, came to the conclusion that the termination of services of workman was in violation of provisions of Section 25F of the Industrial Dispute Act, 1947 (the Act) and that the provisions of Section 25G and 25H of the Act were also not followed. Further it was also noticed by the Labour court that no disciplinary proceedings were initiated against the workman and consequently passed the award and directions, as noticed hereinbefore.

It is submitted by learned counsel for the petitioner that the Labour court committed grave error in passing the award impugned. It was submitted that from the material available on record, it was apparent that the workman chose to remain on leave/absent randomly and as the work of petitioner institution got affected on account of such attitude of the workman, the petitioner had no option but to terminate the services of the workman and, therefore, the Labour court was not justified in ordering reinstatement.

Further submissions were made that during the course of conciliation proceedings and before the Labour court the consistent case of the petitioner employer was that it was prepared to take the workman back in service subject to his correcting his attitude, however, the same was not accepted and an undertaking in this regard was not forthcoming from the workman, therefore, the Labour court was not justified in awarding 25% of the back wages to the workman.

Reliance was placed on the judgments of Hon<sup>ble</sup> Supreme Court in General Manager, Haryana Roadways vs. Rudhan Singh : (2005) 5 SCC 591 and Bharat Sanchar Nigam Limited vs. Bhurumal : (2014) 7 SCC 177.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

The services of the workman were terminated by order dated 17/6/2010 (Annex.1). The said order reads as under:

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A bare look at the order of termination of services of the workman would indicate that the allegations regarding indiscipline were made against the

workman and it was indicated that by way of disciplinary proceedings his services are being terminated.

It is an admitted fact that no disciplinary proceedings were initiated against the workman before passing the order dated 17/6/2010 and, therefore,

irrespective of any other aspect of the matter, the foundational order of termination of services of workman is in violation of principles of natural

justice and the order being stigmatic could not have been passed without holding inquiry against the workman. It is not in dispute that the workman had

worked for 240 days and as such it was incumbent on the petitioner to comply with the requirements of Section 25F of the Act, which requirements

were admittedly not fulfilled and, therefore, the Labour court was justified in coming to the conclusion that the termination of services of the workman

was bad being in violation of mandatory provisions of the Act.

So far as the submission made by learned counsel for the petitioner regarding award of back wages on account of the fact that during the course of

conciliation proceedings as well as before the Labour court the petitioner had offered to take the workman back in service is concerned, a bare look at

the record indicates that offer made by the petitioner was not unconditional and once the termination has been found to be bad in law, the workman

was entitled to award of back wages.

So far as the judgments in the case of Rudhan Singh (supra) and Bhurumal (supra) are concerned, it was laid down by Honâ??ble Supreme Court

that there is no rule of thumb that in every case where the Industrial Tribunal comes to the conclusion that termination of service was in violation of

Section 25F of the Act entire back wages should be awarded. Admittedly, in the present case the Labour court has not awarded the entire back

wages and has only awarded 25% of the back wages, which in the circumstances of the case cannot be said to be excessive so as to require

interference by this Court while exercising jurisdiction under Article 227 of the Constitution of India.

In view of the above discussion, there is no substance in the writ petition and the same is, therefore, dismissed.