
(1996) 04 RAJ CK 0023
In the Rajasthan High Court
Case No : .C.S.A. (W) No. 579 of 1991

Managing Director and Another

APPELLANT

Vs

Faily Ram

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 74 FLR 2459 : (1997) 1 LLJ 817

Hon'ble Judges : A.P. Ravani, C.J;D.C. Dalela, J

Bench : Division Bench

Advocate : Mahendra Singh, for the Appellant; R.P. Garg, for the Respondent

Final Decision : Dismissed

Judgement

Dalela, J.—The respondent petitioner was appointed as Mali to look after the garden of the Design, Development and Research Centre of the Rajasthan Small Industries Corporation for two to three hours everyday against a lump sum monthly payment of Rs. 100. The Annexure R/1 filed with the reply by the appellants-non- petitioners, shows that he was so appointed on temporary basis with effect from August 24, 1985. Services of the respondent continued till sometime in the year 1988. Thereafter he was discontinued. He preferred a writ against the appellant non- petitioners and the learned single Judge by his order dated April 15, 1991 accepted the writ petition and directed the respondents-appellants to allow the petitioner to continue in service, and his services shall be treated as continuous. The petitioner was directed to move before the Labour Court/Industrial Tribunal, for the computation of the back wages. The non-petitioners were also given freedom to raise dispute under the Industrial Disputes Act, on the point whether the petitioner remained in gainful employment during the intervening period or not? The petitioner. has also been directed to be paid minimum basic salary and other allowances. Against this order of the learned single Judge, this special appeal has been preferred.

We have heard the arguments of both the sides.

2. The appellants-non-petitioners are the Managing Director and the Senior Manager of the Rajasthan Small Industries Corporation. Since they are incharge of the management of the Corporation, therefore, it cannot be said that the writ petition was not maintainable because the respondent-petitioner had impleaded them as non-petitioner and had not impleaded the Rajasthan Small Scale Industries Corporation as such. The Corporation as such is not prejudiced in any manner by the alleged misconstitution of the petition because the Corporation is an inanimated entity and its management is obviously run and looked after by the present appellants. In the absence of any substantial prejudice, we are of the view that justice cannot be denied merely on the basis of technical objections specially where the petitioner is a small low paid Mali.

3. The learned counsel for the appellants has argued that the respondent petitioner was only a part time employee and therefore, he cannot be said to be a workman within the meaning of Industrial Disputes Act. The essential condition of a person being a workman within the term of definition given in the Industrial Disputes Act is that he should be "employed" to do the work in the industry of his employer and that there should be the relationship between the employer and him as between master and servant. There is no room to incorporate into it the idea that only a permanent employee can be construed to be a workman. There is no room to think that a casual workman does not come within the scope of the definition of "workman". If jural relationship exists, it does not matter whether the employment is part-time or casual or part-time worker must be a regular worker. Here in this case, the petitioner respondent has been engaged as mali to look after the garden of the Corporation for two to three hours every day on the lump sum of Rs. 100 per month. Obviously, the relationship between him and the appellant is as between servant and master. He is under obligation to work for fixed hours everyday, therefore, jural relationship of master and servant does exist between the appellant and the respondent.

4. Obviously, the respondent petitioner is employed by the appellants-non-petitioners to work and look after the garden of the Corporation.

5. In our opinion, part-time worker employed by the employer is a workman within the meaning of Industrial Disputes Act, and as such, the petitioner-respondent is a workman within the Act. The above contention of the learned counsel for the appellants has no force.

6. Since the respondent-petitioner was appointed with effect from October 24, 1985 and his services continued till sometime in the year 1988, obviously, he has completed the service of 240 days and the provisions of Section 25F of the Industrial Disputes Act would be attracted, and the violation thereof would make the discontinuance of service of the respondent by the appellants as unlawful and cannot be sustained. There is no dispute that the provisions of Section 25F of the Act have not been complied with in the matter.

The very fact that the service of the respondent-petitioner was engaged by the

appellants goes to show that he was under the control and supervision of the Corporation in respect of his work. It cannot be said that the respondent worked according to his sweet will. He worked because he was engaged to work by the appellants between the fixed hours. The degree and extent of control may vary and be nominal or extensive depending on the nature of the work to be done. But a certain amount of control or supervision was there, and therefore, the contention that the respondent was not employed by the petitioner cannot be accepted. We broadly agree with the reasons and the conclusions arrived at by the learned single Judge and we find that no case has been made out for the interference in the order of the learned single Judge in exercise of the power u/s 18 of the Rajasthan High Court Ordinance, 1949.

This appeal fails and is, therefore, dismissed, with no order as to costs.