
(2016) 11 RAJ CK 0089
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3231 of 2004

Managing Director

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2017) 2 CLR 248 : (2017) 153 FLR 102 : (2017) 1 LLJ 427

Hon'ble Judges : Mr. Alok Sharma, J.

Bench : Single Bench

Advocate : Mr. Nikhil Simlote, Advocate, for the Petitioner; Mr. K. C. Sharma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Alok Sharma, J. - Under challenge is the award dated 19-9-2003 passed by the Labour court holding that the termination of the respondent workman vide order dated 29-10-1995 passed by the Rajasthan Rajya Sahakari Upbhokta Sangh Limited (hereafter "the Sangh") was in contravention of Section 25F of the Industrial Disputes Act, 1947 (hereinafter the Act of 1947) consequent to which the reference made by the State Government on aforesaid question was liable to be decided in favour of the workman. The labour court in the circumstances directed that the workman be reinstated in service with 25% back wages.

2. The main contention of Mr. Nikhil Simlote, counsel for the petitioner Sangh is that the dispute as to the legality or otherwise of the workman's termination under order dated 29-10-1995 was neither amenable to the Act of 1947 nor the Labour Court had jurisdiction to address the cause of action arising therefore for which reason the reference made in regard thereto under Section 10(1)(c) of the Act of 1947 by the State Government to the Labour Court was ultra vires the Act of 1947. It was however fairly admitted that the workman was indeed engaged with the petitioner Sangh for over a period of 240 days between 25-8-1993 and

20-9-1995 prior to the termination of his service. It was finally submitted that the petitioner was engaged as an agent with Life Insurance Corporation from the date of his removal till the passing of the award dated 19-9-2003, consequent to which back wages could not have been awarded to him in any event and in so doing despite recognizing and accepting the aforesaid fact, the Labour Court exercised its jurisdiction irregularly and perversely.

3. Mr. K.C. Sharma, counsel for the respondent workman submitted, per contra, that no appeal under Section 75 of the Rajasthan Cooperative Societies Act, 1965 against the order of termination dated 29-10-1995 was available. And in any event availability of such a remedy would not entail ousting of the jurisdiction of the Labour Court on reference made under Section 10(1)(c) of the Act of 1947 qua a clear industrial dispute referable to Section 2A of the Act of 1947. It was submitted that when an employee falls within the definition of a "workman" under the Act of 1947 as the respondent workman indeed did while employed as Clerk with the Upphokta Sangh, he had a right to invoke the provisions of the Act of 1947 to his benefit. Consequently a dispute with regard to the workman's illegal termination on 20-9-1995 by the petitioner Sangh partook the character of an industrial dispute, which on the failure of conciliation proceedings entailed making of a reference by the State Government to the Labour Court to determine as to whether the termination of the respondent workman on 20-9- 1995 without compliance with the provisions of Section 25F of the Act of 1947 was legal and valid.

Heard. Considered.

4. This court in the case of Chairman Kulchandra Gram Seva Sahakari Samiti Limited v. Judge Labour Court, Bikaner [1999(1) RLR 711] has held that where a dispute as to termination of workman of a Cooperative Society arose the only appropriate remedy for the aggrieved workman was one under the Act of 1947. Consequently, there is no force in the contention of counsel for the petitioner Sangh that the dispute as to the respondent workman's termination was not amenable to the provisions of the Act of 1947, in respect of which neither a reference under Section 10(1)(c) of the Act of 1947 by the State Government could be made nor the Labour Court could exercise its jurisdiction by the impugned award. The said contention is liable to be rejected as it is. It is held that the reference made by the State Government to the Labour court with regard to the legality and validity of the respondent workman's termination on 29-10-1995 was within its jurisdiction as was the resultant impugned award dated 19-9-2003.

5. counsel for the workman submits that the back wages till the date of award 19-9-2003 would not be claimed by the workman and the impugned award be modified to that extent. It is so directed and the award accordingly modified. The respondent workman would not be entitled to 25% back wages from the date of his illegal termination to the date of the award. As far as the wages subsequent to the award 19-9-2003 till the date of reinstatement of the workman is

concerned, the workman will at liberty to avail his remedy under Section 33(c) (2) of the Act of 1947.

6. In the context of admitted fact that the workman had worked for more than 240 days in twelve months immediately preceding his termination on 20-9-1995 and provisions of Section 25F of the Act of 1947 were not complied with by the petitioner Sangh, no interference with the impugned award 19-9-2003 is called for by this court in holding the termination to be illegal and directing his reinstatement.

7. The writ petition stands disposed of accordingly.