
(1992) 05 RAJ CK 0029
In the Rajasthan High Court
Case No : C.W.P. No. 667 of 1985

Moti Lal Koli

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-05-1992

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4(3)
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1993) 1 LLJ 993 : (1992) 1 RLW 653 : (1992) 2 WLC 547

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : J.P. Goyal, for the Appellant; Sumitra Goyal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The petitioner has challenged the orders dt. March 16, 1985 and March 21, 1985, both of which relate to the termination of his service.

2. The petitioner has stated that he is a member of Scheduled Castes. He passed 8th Class examination in the year 1969, His date of birth is July 5, 1954. He was appointed as Sub-Nakedar in Municipal Board, Khairthal by an order dated November 10, 1982, issued by the Executive Officer of Municipal Board, Khairthal. Term of the service of the petitioner was extended on the basis of internal correspondence between the functionaries of Municipal Board, Khairthal and the Directorate of Local Bodies. Along with the petitioner, term of appointment of S/ Shri Vikaram Singh and Raghuvir Prasad was also extended. The Deputy Secretary of the Government, Local Self Government Department, wrote a letter dated March 16, 1985 in which he noted that appointment of the petitioner as Sub-Nakedar was made without calling his name from the Employment Exchange and therefore, it was irregular. He directed the Executive Officer to terminate the service of the petitioner by giving one month's notice or pay in lieu thereof. The Executive Officer, Municipal Board, Khairthal issued order dated March 21, 1985

and terminated the petitioner's service with immediate effect by giving one month's notice pay. The Government had issued a circular No Estt. (S). F. 16 (10) DLB/68/7413-7554 dated April 1, 1969 whereby it was made clear that it was not necessary for the members of Scheduled Castes and Scheduled Tribes to have their names registered with the Employment Exchange and they can be appointed against reserved vacancies without registration of their names with the Employment Exchange. In terms of this circular it was not necessary for the petitioner to get his name registered with the Employment Exchange.

3. The petitioner has stated that before terminating his service no notice or an opportunity of hearing was given to him. Being a member of Scheduled Castes it was not necessary for him to have his name registered with the Employment Exchange. His appointment was made in accordance with the Rules. His appointment was in accordance with the provisions of the Rajasthan Municipal (Ministerial and Subordinate Service) Rules, 1963 (for short "the 1963 Rules"). Before terminating his service, he was neither paid nor offered retrenchment compensation in terms of Section 25F(b) of the Industrial Disputes Act, 1947 (for short "the 1947 Act"). The petitioner has also stated that he has been discriminated. Services of other persons similarly situated have not been terminated.

4. In its reply to the writ petition respondent No. 4 has stated that the appointment of the petitioner was contrary to Rule 27(2) of the 1963 Rules and Section 4(j) of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. It has also been stated by the respondents that appointment of the petitioner was made without prior approval of the Director Local Bodies. Moreover, vacancies have been notified by the Rajasthan Panchayat and Local Bodies Subordinate Service Commission, Jaipur vide Notification dated October 9, 1984. The respondents have also made reference to the Government Circulars dated December 30, 1983 and October 19, 1984 by which ban was imposed on employment of the employees on daily wages or fixed wages or on contingency basis, and also for obtaining non-availability certificate.

5. By an interim order dated April 22, 1985 operation of the orders dated March 16, 1985 and March 21, 1985 was stayed by the court and the same was confirmed vide order dated May 7, 1985. Thus under the court's orders the petitioner has continued in service.

6. The first argument advanced by the learned counsel for the petitioner is that the termination of service of the petitioner has been ordered on an wholly erroneous assumption about irregularity having been committed at the time of the appointment of the petitioner. Shri Goyal argued that being a member of Scheduled Castes the petitioner was not required to be registered with the Employment Exchange. On the basis of the Government orders Shri Goyal argued that it was not necessary for the petitioner to have been registered with the Employment Exchange for the purpose of getting appointment in the service of the Municipal Board, Khairthal.

7. I find merit in the submission of Shri Goyal. The Government Order dated April 1, 1969 clearly dispenses with the requirement of registration with the Employment Exchange in the case of members of Scheduled Castes and Scheduled Tribe. It is not the case of the respondent No. 4 that the petitioner was appointed against the general vacancy. Therefore, the mere fact that the petitioner was not registered with the Employment Exchange prior to his appointment cannot be made basis for declaring the appointment of the petitioner to be irregular and the same cannot be made ground for termination of his service.

8. The second submission of Shri Goyal, which too merits acceptance, is that the termination of the service of the petitioner has been brought about without compliance of the mandatory provisions of Section 25F(b) of 1947 Act. The facts which have been disclosed in the petitioner clearly show that the petitioner has worked for more than 240 days in a span of 12 months. The activities of the Municipal Board brings it within the scope of the term "industry" as defined u/s 2(j) of 1947 Act. This proposition has been laid down by a Full Bench of this Court in Alladeen v. M.B. Deshnok: 1986 (2) Judicial Surveyor 62. The petitioner being Sub-Nakedar comes under the definition "workman" as contained in Section 2(s) of 1947 Act. Undisputedly no retrenchment compensation was either paid or offered to the petitioner on or before March 21, 1985. Therefore, the non-compliance of Section 25F(b) is apparent on the face of the record.

9. Thus on both the counts termination of the service of the petitioner is liable to be declared as invalid and it is so declared.

10. The writ petition filed by the petitioner succeeds and it is hereby allowed. Termination of the service of the petitioner in pursuance of the orders dated March 16, 1985 and March 21, 1985 is declared illegal and void. These orders are accordingly quashed. The petitioner shall be entitled to all the consequential benefits. No order as to costs.