
(2001) 01 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1248 of 1999

M/s. Rajasthan Co-operative Dairy Federation Ltd.

APPELLANT

Vs

The Judge Industrial Tribunal and Labour Court, Bikaner

RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 3

Citation : (2001) 90 FLR 33 : (2001) 2 LLJ 110 : (2001) 2 RLW 981 : (2001) 2 WLC 128 : (2001) 1 WLN 730

Hon'ble Judges : Rajesh Balia, J;P.C. Tatia, J

Bench : Division Bench

Advocate : B.C. Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

Balia, J.

(1). Heard learned counsel for the appellant.

(2). The appellant challenges the award made by the Labour Court, Bikaner on 24th June, 1998 in connection with the dispute referred to it relating to alleged illegal termination of services of Karani Singrrsince deceased now represented by his widow.

(3). Karni Singh has raised dispute about his termination inter alia on the ground that he has been in continuous employment for a period of one year immediately before the date of his termination, his services were terminated by the present petitioner-appellant on 8.11.87 and termination of services was without complying with the provisions of Section 25F and 25G of the Industrial Disputes Act, 1947 (for short "The Act of 1947").

(4). The Labour Court finding that the said workman was employed by the M/s. Rajasthan Co-operative Dairy Federation Ltd., Hanumangarh and the workman having been employed for 240 days during 12 calendar months immediately

preceding the date of termination, he was entitled to benefit under Secs. 25F & 25G of the Act of 1947.

(5). The contention of the employer that since Kami Singh was employed by the Contractor to look after the security of the property of the Federation, the said Kami Singh was not employed by the Federation but was employed by the Contractor, therefore no liability arises in respect of termination, even if illegal which has taken place by his immediate employer Contractor. This plea did not find favour with the Labour Court keeping in view the definition of the workman u/s. 2(s) of the Act of 1947 is applicable in Rajasthan.

(6). With this finding and keeping in view the fact that the said Kami Singh has died during the pendency of reference proceedings he awarded Rs. 28,800/- as lump sum compensation to the widow of deceased employee.

(7). Aggrieved with the aforesaid award dt. 24th June, 1998, the present appellant filed the Writ Petition No. 2186/99 before this Court.

(8). The said writ petition has been dismissed by the order under challenge. The learned Single Judge did not interfere with the order as his opinion did not amount to failure of substantial justice and he did not enquire into the correctness of the contention raised by the learned counsel for the appellant that the deceased was not employee of the appellant and he was working through Contractor.

(9). Aggrieved with the dismissal of the writ petition, this appeal was filed and same contention has been raised.

(10). Apart from the fact that we are in agreement with the learned Single Judge that while exercising the discretion under Articles 226 and 227 in entertaining the writ petition to keep the interest of substantial justice as paramount consideration for invoking the extraordinary jurisdiction and discretion has appropriately not been exercised in favour of the petitioner, we do not find any substance on merit of the contention.

(11). So far as the Rajasthan is concerned the definition of "workman" as provided in Section 2(s) of the Act of 1947 was amended by the Rajasthan Act No. 34 of 1958 through its Section 3 w.e.f. 1.7.1960. The definition of workman u/s. 2(s) of the Act of 1947 as applicable in the State of Rajasthan since said amendment included any person employed in any industry by a employer or by a contractor in relation to the execution of his contract with such employer. The case of the appellant is that deceased Kami Singh was employed by a contractor in relation to execution of his contract for maintaining security of the Federation's property which contract was between the Federation and the Contractor. The definition as amended in Rajasthan is clearly to include within the ambit of employees of the establishment also the workman employed by the Contractor in execution of the contract undertaken by such Contractor for the employer in which category even on the contention of the management, case of

Kami Singh would fall.

(12). We find no merit in this case, therefore this appeal is dismissed in limine.