
(2000) 10 RAJ CK 0031
In the Rajasthan High Court
Case No : .C.S.A. (W) No. 572 of 2000

Municipal Corporation

APPELLANT

Vs

Ram Chandra Shringi

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2001) 89 FLR 32 : (2001) 1 LLJ 1162 : (2001) 1 WLC 60

Hon'ble Judges : G.L. Gupta, J;Arun Madan, J

Bench : Division Bench

Advocate : Sanjay Pareek, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Madan, J.—In this special appeal, Municipal Corporation, Kota (appellant) has assailed the validity of the Order dated March 9, 2000 of the learned single Judge whereby he modified the Award dated December 2, 1998 passed by the Labour Court, Kota in LCR 30/93 to the extent that the termination of services of the respondent workman was held to be illegal and as such he has been ordered to be reinstated in services of the appellant-Corporation on same terms and conditions on which he was employed at the time of his termination from the date of award i.e. March 2, 1996 with the modification that the respondent workman was held not further entitled to claim any back wages prior to the date of the Award.

2. Factual matrix leading to this special appeal is that Ramchandra (respondent No. 1) raised an industrial dispute before the Conciliation Officer, Kota, upon whose failure report submitted to the Government on May 30, 1992, the Government referred his dispute to the Labour Court, Kota u/s 10(1)(c) of the Industrial Disputes Act, 1947 for short "the Act" for adjudicating the following reference:

"Whether termination of workman Ramchandra Shringi, s/o Laxman Prasad (who

is being represented by Shri Madanlal Sharma, District President of Rajasthan Trade Congress Union, Kota) ordered by Commissioner Municipal Corporation, Kota, w.e.f. January 1, 1991 was valid and legal? If not, to what relief if any, the workman is entitled to claim?"

3. According to the respondent workman, as stated in his statement of claim (Annexure 1) he was appointed as Watchman in Garden Section of the appellant Corporation on March 1, 1988 and he continued to work thereunder subordination of Sarva Shri Narendra Singh Gaur, Daulatram Munshi, Om Prakash, Gopal Ram Munshi and Surajmal Munshi upto December 3, 1990 but his services were terminated w.e.f. January 1, 1991 under an oral order without compliance of procedure prescribed u/s 25F of the Act. In counter affidavit (Annexure 2), the appellant Corporation denied the claim of the workman. The workman submitted two affidavits (Annexures 3 & 4) reiterating the facts stated in his statement of claim. The workman was cross-examined by the appellant. On behalf of the appellant, one Shri Krishan Mohan Pradhan in charge of Garden Section submitted affidavit (Annexure 5) denying the fact of the workman having been appointed as Beldar or Watchman and completed 240 days in the calendar year 1988.

4. However, after considering the evidence on record, the Labour Court, Kota by its Award dated December 2, 1998 (Annexure 6) held termination or removal of the workman from service as illegal and unjustified and accordingly directed the appellant Corporation to reinstate the workman in service with back wages @ 30% with continuity in service, against which the appellant Corporation submitted aforesaid writ petition before the learned single Judge who modified the Award as indicated above. Hence this special appeal.

5. We have heard Shri Sanjay Pareek, learned counsel for the Corporation and perused the material on record.

6. Shri Sanjay Pareek vehemently contended that the respondent workman was never appointed in accordance with relevant service rules against any sanctioned post and that prior to his termination since the respondent workman had not completed 240 days either in 1989 or 1990 inasmuch as the Corporation granted approval on June 1, 1988 to appoint the workman for 3 months and for two months in December 1988 as is evident from the muster rolls produced before the Labour Court and that apart, even if the case of the workman is accepted then also his termination falls within the ambit of Section 2(oo)(bb) of the Act, hence, it was not obligatory on the part of the appellant Corporation to comply with provisions of Section 25-F of the Act. Therefore, Shri Pareek urged that both the Labour Court as also the learned single Judge failed to consider this aspect of the matter, thereby committed an error of law in holding the impugned termination of the workman as illegal and in directing his reinstatement with back wages.

7. Section 25-F of the Act postulates, conditions precedent to retrenchment of

workman and according to which, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that, employer until: - (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months, and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by appropriate Government by notification in the Official Gazette.

8. First condition u/s 25-F of the Act is that the workman must be employed in an industry and must have been in continuous service for one year before his retrenchment. Secondly, before his retrenchment the workman is given one month's notice in writing indicating the reasons for retrenchment. In the instant case, in our considered view, it is an admitted case of the Corporation and rather there is concurrent finding of fact having been arrived at by both the Labour Court and the learned single Judge, that the workman (respondent No. 1) was employed in Garden Section of the Corporation. Once the workman stated not only in his statement of claim but also in his affidavits and evidence led before the Labour Court that he was employed to work in Garden Section of the employer Corporation from March 1, 1988 and continued till December 31, 1990 before his retrenchment and to which the employer Corporation denied and came with specific assertion that the workman did not complete 240 days continuously in a calendar year either in the year 1989 or 1990, then the onus stood shifted upon employer so as to disprove workman's claim by discharging onus producing entire muster roll/attendance register of Garden Section for the period from March 1, 1988 till December 31, 1990 during which the workman is claimed to have employed with the Corporation. But, curiously enough the Corporation failed to discharge its onus and it withheld muster roll of the entire period of 1988, 1989 and 1990. It produced muster rolls only for the months namely June, November and December 1988, despite several opportunities having been given by the Labour Court to produce entire muster rolls. Hence, the Labour Court was left with no option except to draw inference against the Corporation.

9. The Labour Court placed reliance upon the decision in (1) H.D. Singh Vs. Reserve Bank of India and Others, and (2) Chief Engineer Irrigation v. Kamlesh. In H.D. Singh's case (supra), the Apex Court observed as under in H.D. Singh Vs. Reserve Bank of India and Others,

"The striking off the name of the appellant from List II amounted to retrenchment u/s 2(oo) and was in violation of Section 25-F. The Reserve Bank is directed to enlist the appellant as a regular employee, as Tikka Mazdoor, to reinstate him and pay him his back wages up-to-date."

"Striking off the name of a workman from the rolls by the employer amounts to

"termination of service" and such termination is retrenchment within the meaning of Section 2(oo) if effected in violation of the mandatory provision contained in Section 25-F, and is invalid.

Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, and The State Bank of India Vs. Shri N. Sundara Money,

"appellant had qualified himself to sustain his claim to the benefits of Section 25-F In absence of any evidence to the contrary, an inference has necessarily to be drawn that the appellant's case that he had worked for more than 240 days from July 1975 to July 1976 is true."

"The Memorandum setting out the terms, and conditions of the appellant's" appointment did not contain any term that his name would be struck off the rolls once he passed the matriculation examination.

Striking off of the name of the appellant under these circumstances is clearly termination of his service and the dispute in this case therefore squarely comes within Section 2-A.

The confidential circular directing the officers that workmen like the appellant should not be engaged continuously but should as far as possible, be offered work on rotation basis and the case that the, appellant is a badli worker, have to be characterised as unfair labour practice. The plea that the appellant was a badli worker also has to fail in absence of any material.

The plea that the appellant was a badli. worker also has to fail. The Bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the Industrial Law.

It is matter of concern that the Reserve Bank Who should set a model for other employees being a prestigious institution, behaved towards its employee in a dubious manner by denying the appellant his job because he had become more qualified without having regard to the grave unemployment problem and the increasing number of educated unemployed persons. It appears from the disclosures made in the confidential circular that the Bank was determined to adopt methods to terminate the services of the employees like the appellant. The employer's attempt should be to evolve a contended labour. In this case the Bank should have treated the appellant as a regular hand in List II."

10. In this view of the matter, the learned Labour Court after considering evidence on record arrived at a finding of fact, to which the learned single Judge has concurred, that the respondent workman had worked for more man 240 days prior to the impugned termination of his service, inasmuch as before termination compliance of Sections 25-F and 25-H of the Act was not made. In our considered view, such a finding of fact based on due appreciation of evidence on record having been arrived by the Courts below does not warrant any interference by this Court and hence we do not find any error of law either in the impugned Award of the Labour Court or in the impugned order of the learned

single Judge, because the respondent workman had qualified himself to sustain his claim to the benefits of Section 25-F of the Act and that apart, as discussed above, in absence of any evidence to the contrary, an inference has necessarily to be drawn, as has also rightly been done by the Labour Court because the appellant Corporation has despite several opportunities having been granted by the Labour Court failed to produce muster rolls for the entire period for which the respondent workman claimed to have worked in Garden Section from March 1, 1988 to December 31, 1990, that the respondent workman's case that he had worked for more than 240 days by rendering continuous service with the appellant Corporation before the impugned termination is true. That being so, we do not find any merit in any of the contentions advanced by the learned counsel for the appellant Corporation. Consequently, this special appeal fails and is hereby dismissed summarily.