
(2008) 03 RAJ CK 0042
In the Rajasthan High Court

Nand Kishore

APPELLANT

Vs

Judge, Labour Court and Others

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (2008) 3 RLW 1940

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Judgement

Mahesh Chandra Sharma, J.—By way of this writ petition the petitioner has prayed that me impugned order dated June 6, 1995 (Annexure-1) passed by the learned Labour Court Kota way kindly be quashed and set aside. He further prayed for any other appropriate order or direction in his favour.

2. The case as set up by the petitioner in short is that he through his Union raised an Industrial Disputes in the matter of his illegal termination of services. The State Government vide its notification dated 30.6.1990 referred the dispute for adjudication to the Labour Court, Kota.

3. According to the petitioner he was engaged on muster roll basis on 26.9.1997 under respondent No. 2. He was posted at Sultanpur South Colony on Machine No. CE-6 Elevotive for levelling the earth etc. He was helper on that Machine. He was working under Field Machinery Sub-Division-19. Thereafter he was transferred in Sub-Division-18. He worked for 139 days in Sub- Division-19 and 99 days in Sub-Division-18. It is also submitted that the both Sub-divisions are under direct control and supervision of respondent No. 2 (Executive Engineer, Machinery Division-II, Kota) and the respondent No. 2 is competent authority to appoint workmen on work-charged basis. It is also submitted that as per Work Charged Employees Service Rules, 1964 Division wise seniority of work-charged is maintained and benefit of regularization in service is also given on the basis of division wise seniority. His services were illegally terminated on 27.7.1998 neither given any notice to him nor notice pay nor retrenchment compensation

was given to him nor compliance of Rule 76 was made by the respondent and no seniority list of daily wages employees was prepared or published. The petitioner further stated his termination was in blatant violation of provisions of Section 25F of the Industrial Disputes Act.

4. The respondent No. 2 has controverted the arguments and stated that the petitioner did not complete 240 days of service in one calendar year and termination of the petitioner was legal and justified and petitioner is not entitled for any relief and the sub-division where the petitioner is working is an independent units. Thus, Section 25F of the Industrial Disputes Act is not required.

5. Learned Counsel for the petitioner Mr. Bhanwar Bagari has relied upon the judgment delivered by this Court in case of Prabhu Dayal Jat v. Alwar Sahakari Bhumi Vikas Bank Ltd. and Ors., in D.B. Civil Writ Petition No. 2859/1987 decided on 1st May 1989, reported in 1989 (1) RLR 439. The operative portion of para 8 of the judgment reads as under:

The definition of the "continuous services" has been given in Section 25B of the Act. Sub-section (2) lays down that what is required is that the workman should have been in continuous service under an employer. The employer must be one and the same. It is not at all necessary that the workman should work in the same capacity during . the required period in order to earn the continuous service as defined in Section 25B of the Act. If the contention of Mr. Lodha is accepted, it would result to anomalous position and create unforeseen hardship to the workman. The legislature while defining the "continuous service" never intended so. In our opinion, in order to earn the continuous service by a workman, what is required is that he should work under the same employer. It is not necessary that he should continue to do the work in the same capacity. If he is a workman as defined in the Act and the employer is the same, he earns the continuous service by working for 240 days within the period of 12 calendar months preceding the date of retrenchment. The petitioner has worked from 24.1.1987 to 12.10.1987 i.e. to say 240 days in total. He has thus worked for 240 days during the 12 calendar months preceding the date of his retrenchment. He had thus earned the continuous service at his credit.

6. He has also relied upon the judgment delivered by this Court in S.B. Civil Writ Petition No. 1174/1989 titled as Virendra Kumar Pareek v. Modern Food Industries Ltd. reported in RLR 1991 (1) : 1991 (2) RLW 307. The relevant portion of the judgment is reproduced as under:

Continuous Service-Workman worked from 7.5.1986 to 7.1.1987, i.e. 246 days, and thereafter he worked from 1.7.1987 to 4.6.1988 with certain breaks including break from August to October, 1987 -Whether the workman can be treated to have completed 240 days for the purpose of Section 25F Held, yet- He completed 240 days and was entitled to benefit u/s 25F Verbal retrenchment, set aside.

7. In view of the above cited judgments the learned Counsel for the petitioner has prayed that this case is remitted back to the learned Labour Court, Kota to decide the matter afresh.

8. The learned Dy. G.A. Mr. Shiv Lal Meena does not oppose the same.

9. Hence, in view of the above cited judgments submitted by the learned Counsel for the petitioner, I remit back the matter to the Judge, Labour Court, Kota after setting aside the award passed by him on June 6, 1995 and directed to decide the case afresh.

10. Both the parties are directed to appear before the Judge, Labour Court, Kota on 27th of March 2008 and the learned Labour Court, Kota is directed to decide the matter within a period of one months from that day. Hence, this writ petition is partly allowed and stands disposed of.