

(2012) 02 RAJ CK 0044

In the Rajasthan High Court

Case No : .S.A. (W) No. 1858 of 2011 In CWP No. 1424 of 2007

Nandu Devi (Smt.)

APPELLANT

Vs

Judge, Labour Court No. 2, Jaipur and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 142

Industrial Disputes Act, 1947 — Section 11A, 25F, 25G, 25H

Citation : (2012) 135 FLR 852 : (2012) 3 LLJ 753 : (2012) LLR 582

Hon'ble Judges : Raghuvendra S. Rathore, J; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : K.C. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain-I, J.—Heard learned counsel for the appellant. The appellant has preferred this intra Court appeal challenging the impugned order dated 1.9.2011, passed by learned Single Judge, whereby writ petition filed by the petitioner against award of Labour Court was disposed off and instead of reinstatement of the petitioner with back-wages, it was directed that she would be paid compensation of Rs. 50,000.

2. Submission of learned counsel for the appellant is that as and when there is violation of provisions of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"), the reinstatement in service is automatic, therefore, order of reinstatement of the petitioner should have been passed. He further submitted that the amount of compensation, in lieu of reinstatement in service, awarded by learned Single Judge is also meagre and the same may be enhanced.

3. We have considered the submissions of learned counsel for the appellant and examined the impugned order passed by learned Single Judge as well as award passed by the Labour Court.

4. From the order passed by learned Single Judge and the award passed by the

Labour Court it appears that the petitioner was appointed as Part-Time Cook by Mesa Committee of Social Welfare Department on 1.7.1998 and her services were terminated on 23.5.1999. She initially filed a writ petition, which was dismissed by Single Bench of this Court on the ground of alternative remedy. Thereafter, a reference was made and the Labour Court vide its award dated 4.12.2006 came to a conclusion that the appellant was not appointed by Social Welfare Department. There Is no relationship of employer and employee. The Labour Court also came to a conclusion that the workman herself abandoned her services and retrenchment of workman is not proved. Being aggrieved with the award passed by the Labour Court, the petitioner filed writ petition. Learned Single Judge, after considering submissions of parties, came to a conclusion that there was relationship of employer and employee and workman worked for more than 240 days, therefore, there Is violation of provisions of Section 25F of the Act, therefore, set aside the award passed by the Labour Court. So far as reinstatement of workman is concerned, learned Single Judge did not pass an order of reinstatement of workman and awarded compensation of Rs. 50,000 in lieu of reinstatement with back-wages.

5. So far as first submission of learned counsel for the appellant about automatic reinstatement of workman with back-wages on violation of provisions of Section 25F of the Act is concerned, we may refer the judgment in Jaipur Development Authority Vs. Ram Sahai and Another, wherein the Hon''ble Apex Court observed that even if it is assumed that there is violation of provisions of Section 25G and 25H of the Act, but the same by itself would not mean that the Labour Court should have passed an award of reinstatement with entire back-wages. The Hon''ble Apex Court set aside the order of reinstatement of workman in service and awarded compensation in lieu of reinstatement of workman with back-wages. Para 28 of the Judgment reads as under:

We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back-wages. This Court time and again had held that the jurisdiction u/s 11A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by It. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as In 1987. It would not be proper to direct his reinstatement with back-wages. We, therefore, are of the opinion that Interest of justice would be sub served if Instead and in place of reinstatement of his services, a sum of Rs. 75,000 Is awarded to the respondent by way of compensation as has been done by this Court In a number of its judgments. (See State of Rajasthan v. Ghyan Chand, (2006) 7 SCC 755.)

6. In *State of Rajasthan Vs. Sarjeet Singh and Another*, the Hon''ble Supreme Court held that even if it is assumed that there is violation of Section 25-G or 25H of the ID Act, but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back-wages. The Hon''ble Supreme Court in the facts and circumstances of that case, awarded Rs. 30,000 as compensation in lieu of reinstatement of workman with back-wages. Para 16 of the judgment reads as under:

In terminating the services of Respondent 1, we would assume that violation of Section 25G or 25H occurred (although there is no factual basis therefor), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back-wages. We, however, although ordinarily would have set aside the impugned award and consequently the judgment of the High Court; in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the State to pay a sum of Rs. 30,000 to Respondent 1. Such payment should be made within eight weeks from date failing which the same shall carry an interest at the rate of 9% per annum. The appeal is allowed with the aforesaid directions. The parties shall pay and bear their own costs.

7. In *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, the Hon''ble Apex Court considered its earlier judgments and observed that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back-wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back-wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. Para 7 of the judgment is reproduced as under:

It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back-wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back-wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

8. In view of above principles of law laid down by Hon''ble Apex Court, it is clear that even if there is violation of Section 25H and Section 25G of the Act, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back-wages and compensation instead of reinstatement has been held proper to meet the ends of justice.

9. So far as another submission of learned counsel for the appellant about quantum of compensation awarded in lieu of reinstatement in service is concerned, we find, that workman worked only for a short period from 1.7.1998 to 23.5.1999, i.e. less than a period of one year. Learned Single Judge after considering all the facts and circumstances of the case, exercised its discretion and awarded a sum of Rs. 50,000 as compensation in lieu of reinstatement with back-wages. In our view, the Appellate Court ordinarily should not interfere in the discretion exercised by learned Single Judge. In these circumstances, we do not find any force in any of the submissions of teamed counsel for the appellant. The appeal is, accordingly, dismissed being devoid of any merit.