
(2015) 01 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 445/2014

Paschimi Rajasthan Dughdh Utpadak Sahakari Sangh

APPELLANT

Vs

Deen Mohd.

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0065

Hon'ble Judges : Jaishree Thakur, J.;Gopal Krishan Vyas, J.

Bench : Division Bench

Advocate : D.K. Parihar, for the Appellant

Final Decision : Dismissed

Judgement

1. The instant special appeal has been filed by the appellant Pashimi Rajasthan Dughdh Utpadak Sahakari Sangh (hereinafter referred to as the appellant Sangh for short) under Rule 134 of the Rajasthan High Court Rules, 1949 against the order dated 13.2.2014 passed by the learned Single Judge of this Court in SBCWP No. 4979/2009 filed by late Sh. Deen Mohd. against the award dated 23.12.2008 passed by the learned Labour Court, Jodhpur in Industrial Dispute Case No. 10/2004.

2. Brief facts of the case are that the respondent workman late Deen Mohd. was engaged as casual labour by the appellant Sangh who continued as casual labourer upto 10.12.1989 but his services were terminated by a verbal order. Aggrieved against the said verbal order dated 10.12.1989, the respondent workman preferred SBCWP No. 82/1990 before this Court but the same was dismissed by the learned Single Judge against which, the respondent workman preferred special appeal being DBSAW No. 405/1996 and vide judgment dated 13.4.2001, the Division Bench of this Court allowed the special appeal and set aside the termination order and the order of learned Single Judge. In the judgment dated 13.4.2011 the Division Bench issued specific direction for reinstatement of the respondent workman with all other consequential benefits

except the benefit of any arrears of wages anterior to delay of the order. In compliance of aforesaid order, the respondent workman late Deen Mohd. was reinstated in service vide order dated 14.5.2001. After reinstatement, the respondent workman made a request for regularization on the post because in the judgment dated 13.4.2001 passed in DBSAW No. 405/1996 passed by the Division Bench all consequential benefits were granted except the benefit of arrears of wages.

3. The appellant refused to grant benefit of regularization to the respondent workman late Deen Mohd. therefore, the respondent-workman raised industrial dispute and after reference made by the appropriate government filed a claim petition before the Judge Labour Court, Jodhpur being Claim Petition No. 10/2004 but the Judge, Labour Court rejected the prayer for reinstatement vide award dated 23.12.2008. The respondent workman late Deen Mohd. preferred SBCWP No. 4979/2009 against the award dated 23.12.2008 in which the learned Single Judge after taking into consideration entire facts of the case and the fact that Division Bench of this Court in DBSAW No. 405/1996 filed by the respondent workman late Deen Mohd. granted benefit of continuity of service except the back wages, allowed the writ petition and quashed the impugned award dated 23.12.2008 passed by the Industrial Dispute Tribunal and Labour Court, Jodhpur in Industrial Dispute No. 10/2004 and issued direction to the appellant to treat the respondent workman late Deen Mohd. as regularized in service from 14.5.2004 after 3 years from the date of actual reinstatement on 24.5.2001 in pursuance of the Division Bench judgment and further directed that the respondents shall conferred the benefit of the regular pay scale from that date and after adjustment of the daily wages already paid to him, the arrears would be payable to the legal representatives of the deceased Government servant now on record within a period of 3 months from the date of order and if the said arrears are not paid within a period of three months from the date of judgment then arrears will bear simple interest @ 9% per annum. It is also directed that other benefits on account of aforesaid Division Bench judgment in favour of the petitioner if any accruing to them are not being adjusted upon in the present case and the petitioner or his legal representatives will be free to avail appropriate remedy for the same.

4. The learned counsel for the appellant vehemently submitted that the order impugned deserves to be quashed because the learned Single Judge has erred in substituting the legal representatives of respondent writ petitioner late Deen Mohd. after his death, which is not permissible in law because the right to sue did not survive as it was personal contract of service. To substantiate his argument, the learned counsel for the appellant invited our attention towards the judgment of the Hon"ble Supreme Court delivered in Rameshwar Dayal Vs. Indian Railway Const. Co. Ltd. and Others, and Secretary, State of Karnataka and Others Vs. Umadevi and Others, and submits that the order impugned may be quashed.

5. After hearing the learned counsel for the appellant we have perused the order passed by the Division Bench of this Court in earlier litigation in which the respondent workman Deen Mohd. challenged the order of termination. The Division Bench of this Court issued the following direction in DBSAW No. 405/1996 on 13.4.2001:

"In these circumstances we allow the appeal as well as writ petition, set aside the order under appeal and also set aside the order of termination passed against the petitioner orally and direct reinstatement of the petitioner with all consequential benefits except the benefit of any arrears of wages anterior to delay of this order." 6. Upon perusal of above directions it is clear that order of termination of the respondent workman late Deen Mohd. dated 10.12.1989 was set aside except back wages all other consequential benefits, including continuity in services were allowed by the Division Bench of this Court.

7. Admittedly, the respondent workman late Deen Mohd. was in restated in service in pursuance of the directions issued by the Division Bench of this Court on 14.5.2001 and, thereafter, a prayer was made by him to grant benefit of regularization but upon refusal of regularization, the respondent workman raised industrial dispute for the purpose of regularization but unfortunately, the Judge, Labour Court, Jodhpur rejected the claim of the respondent workman for regularization while following the judgment of the Hon"ble Supreme Court in Uma Devi (supra), but the learned Single Judge upon consideration of the entirety of the facts held that once the Division Bench of this Court passed an order for granting consequential benefits then the respondents are under obligation to reinstate the petitioner in service. Meaning thereby, the respondent-appellants herein were under obligation to treat the petitioner in service right from his initial appointment which is 21.4.1981 and if the consequential benefits are allowed by the Division Bench of this Court then obviously late Deen Mohd. who worked for more than 10 years become entitled for regularization even as per the directions given by the Constitution Bench of the Hon"ble Supreme Court in the case of Uma Devi (supra) in para No. 53 of the judgment. The para No. 53 of the judgment reads as under:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but

not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme." 8. After perusing the aforesaid judgment of the Hon'ble Supreme Court so also the judgment of the Division Bench passed in DBSAW No. 405/1996, decided on 13.4.2001 in case of respondent workman late Sh. Deen Mohd. we are of the opinion that no error has been committed by the learned Single Judge in passing the order for regularization vide impugned judgment dated 13.2.2014. In our opinion, it is a glaring example of unfair labour practice and therefore, there is no force in this special appeal.

9. Hence, the special appeal is dismissed.