

(1998) 08 RAJ CK 0008
In the Rajasthan High Court
Case No : C.W.P. No. 3003 of 1998

Principal, Doongar College

APPELLANT

Vs

Om Prakash and Another

RESPONDENT

Date of Decision : 08-08-1998

Acts Referred:

Constitution of India, 1950 — Article 227, 39, 41
Industrial Disputes Act, 1947 — Section 2

Citation : (1999) 3 LLJ 978 : (1998) 3 RLW 1812 : (1999) 2 WLC 592

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : M.R. Singhvi, for the Appellant;

Final Decision : Dismissed

Judgement

Yadav, J.—Heard learned counsel for the petitioner Mr. M.R. Singhvi at length.

2. Perused the award under challenge dated February 20, 1998 (Annex.5 to the writ petition) passed by Judge, Labour Court Bikaner.

3. At the first instance it is urged by learned counsel for the petitioner that there is an error apparent on the face of record in the present case. The Judge Labour Court, Bikaner has committed manifest error of law in holding that the college is an industry within the meaning of Section 2(j) and respondent No. 1 is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (in short the Act of 1947). It is submitted by Mr. Singhvi that the college cannot be construed as an industry by any stretch of imagination inasmuch as a college is not a place of any business, trade, undertaking, manufacture or calling of employers and it does not include any calling, service, employment, handicraft, or industrial occupation or avocation of workman. It is contended by Mr. Singhvi that respondent No. 1 also does not fall within the definition of workman as defined u/s 2(s) of the Act of 1947 which means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled,

technical, operational, clerical or supervisory work for hire or reward.

4. Suffice it to say in this regard that the aforesaid point was raised before the Judge, Labour Court, Bikaner (respondent No. 2) and it was negated relying upon a decision rendered by the Apex Court in case of Miss. A. Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, where in it is held that college is an Industry.

5. It is held that expressions "industry" and "workman" used under the Act of 1947 are complimentary to each other. Once it is held that the college is an industry in the present case then there would be no difficulty in holding that respondent No. 1 is a workman being Class IV employee of a Government college run and maintained by Government of Rajasthan. The point raised by learned counsel for the petitioner was also raised before the Judge, Labour Court, Bikaner and it has been correctly addressed by him with which I am in full agreement.

6. It is next contended by Mr. Singhvi with emphasis that the Judge, Labour Court, Bikaner has not properly construed the Rajasthan State Students Fund (Government College) Rules, 1970 (hereinafter referred to as the Rules of 1970).

7. From perusal of award under challenge I am fully satisfied that the Labour Court, Bikaner has looked into the Rules of 1970 with care and caution and after taking into account the facts and circumstances on record arrived at a conclusion that respondent No. 1 is a workman and the college where he was employed is an industry. The finding of fact recorded by Judge, Labour Court, Bikaner on this point is eminently just and proper with which I am at one.

8. This Court is conscious of the fact that power enshrined under Article 227 of the Constitution includes power of judicial review in addition to administrative superintendence in order to ensure proper functioning of the Courts or Tribunals within the State. It is further true that this Court can interfere with a finding of fact only if it is found that it has been arrived at either by Courts or Tribunals on no evidence or it is found to be perverse or it is found that while recording a finding of fact a Court or Tribunal has ignored a material evidence on record which if taken into account the finding of fact would have been otherwise. Looking to the facts and circumstances of the present case, I am satisfied that the conclusion arrived at by the Labour Court, Bikaner to the effect that college is an industry under Sec 2(j) and respondent No. 1 is a workman within the meaning of Section 2(s) of the Act of 1947 is based on evidence. The aforesaid finding cannot be said to be perverse. Nothing has been brought to my notice that the Judge, Labour Court, Bikaner has recorded the aforesaid finding in ignorance of some material on record which if would have been taken into account the finding would have been otherwise. In such a situation, I decline to interfere with the award under challenge.

9. Before parting discussion on the aforesaid point 1 consider it just and proper to observe that respondent No. 1 being a Class IV employee of a Government

college even under the Rules of 1970 cannot be denied benefits of social justice within the framework of the Constitution in view of the fact that Articles 39(a) and 41 require the State to secure to the citizens an adequate means of livelihood and the right to work. In my humble opinion it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. It is true that State may not, by affirmative action be compelled by Courts of law to provide adequate means of livelihood although Article 39(a) and 41 of the Constitution are fundamental in governance yet a person who is already in service of State cannot be allowed to be deprived of his service except according to the procedure established by law.

10. In the present case after analytical discussion if the Judge, Labour Court, Bikaner has come to the conclusion that respondent No. 1 has been retrenched from his service without following just, reasonable and fair procedure established by law under the Act of 1947 which is applicable to him then in such a situation I decline to make such award ineffective by issuing a prerogative writ under Article 227 of the Constitution.

11. It is next contended by learned counsel for the petitioner Mr. Singhvi that the finding of continuous working of 240 days in a calendar year by respondent No. 1 recorded by Labour Court, Bikaner is not sustainable in eye of law.

12. The aforesaid contention is not acceptable to me for the reason that the finding of fact recorded under issue No. 2 relating to working of 240 days of respondent No. 1 formulated by Labour Court, Bikaner is based on evidence on record which is not assailable for the reasons mentioned in the preceding paragraph of this order.

13. Learned counsel for the petitioner Mr. Singhvi at the end invited my attention to paragraph 3 of the affidavit filed by Badri Narain Sharma (Annex.4 to the writ petition) which is reproduced below for ready reference :

Vernacular matter omitted.

14. From the perusal of averments made in paragraph 3 of the affidavit filed by Badri Narain Sharma it is easily deducible that he has not specifically denied that respondent No. 1 has not worked in the Government college for 240 days in a calendar year. I am of the view that the reply given in para 3 of the affidavit is an evasive reply. It goes without saying that if a litigant opposing a legitimate claim of a workman based on 240 days gives an evasive reply then it shall be treated to be an admission on his part. However, I am satisfied that the finding recorded by Labour Court, Bikaner to the effect that the workman respondent No. 1 has worked in the college for more than 240 days in a calendar year is eminently just and proper and as such does not require interference under Article 227 of the Constitution.

15. Upshot of the above discussion is that the instant writ petition lacks merit and it is hereby dismissed in limine.