
(2018) 07 RAJ CK 0204
In the Rajasthan High Court
Case No : Special Appeal Writ No. 410 of 2018

Principal, Rajrishi College, Alwar @APPELLANT@Hash Shri Ram Bharosi

Date of Decision : 18-07-2018

Acts Referred:

Limitation Act, 1963 — Section 5
Industrial Disputes Act, 1947 — Section 25F, 25H, 25G

Citation : (2018) 07 RAJ CK 0204

Hon'ble Judges : Munishwar Nath Bhandari, J;Dinesh Chandra Somani, J

Bench : Division Bench

Advocate : Rajendra Prasad, Virendra Lodha, Jai Lodha

Final Decision : Disposed Off

Judgement

Heard on the application under Section 5 of the Limitation Act so as the special appeal.

Before considering the application under Section 5 of the Limitation Act, we are considering merit of the case.

A dispute was raised by non-appellant-workman to challenge the alleged retrenchment from service without complying the provisions of the Industrial

Disputes Act, 1947 (for short "the Act of 1947"). It was pleaded that non-appellant was engaged in the year 1992 and worked till the year 1994

without any break in service. The facts aforesaid were rebutted by the appellant-State herein. It was stated that workman had not worked for 240

days and otherwise it is not a case of retrenchment but abandonment of service. The non-appellant-workman left service at his own. It may be for the

reason that his engagement was on contractual basis. Both the parties led their evidence. The Labour Court, thereafter, passed an award holding

action of the appellant-State to be illegal and, accordingly, directed for reinstatement of the workman with 50% back wages.

The appellant-State challenged the award of the Labour Court before the learned Single Judge on many grounds, however, writ petition therein was

dismissed. It was also pleaded that one, Gopal was engaged as Sweeper subsequent to termination of the non-appellant. It was taken to be a case of

violation of Sections 25H of the Act of 1947. Learned Single Judge thus refused to cause interference in the award.Â Â

It is stated by learned Additional Advocate General Shri Rajendra Prasad that award passed by the Labour Court is quite sketchy. It does not deal

with any evidence led by the parties. The conclusions were yet drawn regarding working of the nonappellant for a period of 240 days. The documents

submitted by the non-appellant-workman itself were sufficient to show his working for less than 240 days but has been ignored by the learned Single

Judge.

Learned Single Judge even came to the conclusion that witness-Devi Singh in his cross-examination admitted employment of Gopal Sweeper

subsequent to the termination of non-appellantworkman, whereas, in the statement of claim, the non-appellant made allegation to continue Gopal

Sweeper despite junior to him. It is not stated that Gopal was engaged after termination of the non-appellant. The appellant-State,Â otherwise, stated

that nobody was engaged after abandonment of service by the non-appellant in the year 1994. In view of the above, statement of Devi Singh was

accepted contrary to the pleadings. The Labour Court did not find it to be a case of violation of Section 25G of the Act of 1947. For the reason

aforesaid also, interference may be made in the finding recorded by the Labour Court as well as by the learned Single Judge.

Learned counsel for non-appellant-workman has contested the appeal. It is submitted that there is no illegality in the award as well as order passed by

learned Single Judge thus interference may not be made therein.

It is also stated that non-appellant had worked continuously for three years with the appellant No.1, yet his services were terminated without

complying the provisions of Section 25F of the Act of 1947. There was even violation of Section 25G of the Act of 1947, since an employee namely,

Gopal was continued at the time of retrenchment of the non-appellant though he was junior to him as was engaged subsequently. There was no

rebuttal to the pleadings to this effect. In view of unrebutted statement, finding

has rightly been drawn by the Labour Court to hold violation of Section 25G of the Act of 1947. A prayer is made to dismiss the appeal.

We have considered rival submissions made by learned counsel for the parties and perused the record.

The perusal of award does not show a detailed discussion about the issues raised by the parties. The conclusion regarding working days has been

drawn without discussing evidence. Apart from the aforesaid, the conclusion regarding violation of Section 25H of the Act of 1947 has been drawn

alleging engagement of Gopal Sweeper subsequent to termination of the non-appellant workman. The conclusions aforesaid are contrary to the

pleadings. In the statement of claim, the workman had stated about his termination while continuing services of his junior namely, Gopal, thus finding

has been recorded contrary to the pleadings.

In view of the above, we do not find any reason to maintain the finding of the Labour Court in regard to violation of Section 25H of the Act of 1947.

It is more so when other than pleading in the statement of claim, no evidence was led by the non-appellant to substantiate it.

The fact, however, remains as to whether non-appellant had worked for 240 days in preceding 12 calendar months. We have expressed our opinion on

the conclusions drawn by the Labour Court after considering the evidence.

We have thus looked into the record submitted along with reply to the writ petition. Annexure-R-3 along with reply shows working days of the non-

appellant. If preceding 12 calendar months are taken from the date of retrenchment i.e. 31st May, 1994, working of the non-appellant comes to be

more than 240 days as he had worked for 127 days in first five months of year 1994 and worked for 132 days in last seven months of the year 1993.

Since total period comes to 259 days, dis-continuance of the non-appellant without complying Section 25F of the Act of 1947 becomes illegal.

The fact, however, remains that a plea was taken by the appellants before the Labour Court regarding self-abandonment of services by the non-

appellant. The Labour Court has not drawn any conclusion on the aforesaid. The issue aforesaid was not argued before the learned Single Judge while

challenging the award of the Labour Court on the ground that defence taken by them has not been considered. The appellants did not press writ

petition on the defence taken by them and, accordingly, we hold it to be not a

case of self abandonment of service. In view of finding aforesaid, we find it to be a case of retrenchment without following the provisions of Section 25F of the Act of 1947.

We have recorded our finding about working days and, accordingly, while not finding it to be a case of violation of Section 25H of the Act of 1947, we have come to the conclusion for violation of Section 25F of the Act of 1947, that too, based on statement of working days submitted along with reply to the writ petition at Annexure-R-3.

The question now comes about the relief. It is a case where the non-appellant was engaged on contract basis and he had worked lastly in the year 1994. The intervening period is now of more than 24 years. Looking to the aforesaid, direction for reinstatement in service would not be proper, rather, interference in the award passed by the Labour Court and even of the learned Single Judge is made. It is otherwise admitted by the parties that non-appellant did not work continuously for three years and the fact aforesaid is fortified even by Annexure-R-3 submitted along with reply to the writ petition.

Taking into consideration the nature of appointment and total working days of non-appellant, we find it appropriate to award compensation by causing interference in the award as well as order of the learned Single Judge. The reference of following judgments of the Supreme Court would be relevant for moulding relief of reinstatement with back wages:

(i) District Development Officer & Anr. Vs. Satish Kantilal Amerlia, SLP (C) Nos.11956-11957/2015, decided on 28th November, 2017

Â (ii) Bharat Sanchar Nigam Limited Vs. Bhurumal, (2014) 7 SCC 177

(iii) Bhuvnesh Kumar Dwivedi Vs. M/s. Hindalco Industries Ltd.,(2014) SCC 2014

(iv) Deepali Gundu Surwase Vs. Kranti Junior AdhyapakMahavidhalaya (D.Ed.) & Ors., (2013) 10 SC 324

(v) Assistant Engineer, Rajasthan State Agriculture MarketingBoard, Sub-Division, Kota Vs. Mohan Lal, (2013) 14 SCC 543

(vi) Bharat Sanchar Nigam Limited Vs. Kailash Narayan Sharma,(2014) 16 SCC 440

(vii) Harjinder Singh Vs. Punjab State Warehousing Corporation,(2010) 3 SCC 192

(viii) Devinder Singh Vs. Municipal Council, Sanaur, (2011) 6 SCC584

(ix) Jasmer Singh Vs. State of Haryan, (2015) 4 SCC 458

(x) Ajaypal Singh Vs. Haryana Warehousing Corporation, (2015) 6 SCC 321

(xi) Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, AIR 1986 SC 458

In view of the aforesaid judgments, we find a basis to award a sum of Rs.1,50,000/- to the non-appellant-workman towards compensation instead of reinstatement with back wages. The award of the Labour Court as well as learned Single Judge is substituted by the aforesaid.

Since we have considered merit of the appeal and finding grounds to cause interference mainly in the relief, the application for condonation of delay

has been considered. It is after taking note of the judgment of the Apex Court in the case of State of Haryana Vs. Chandra Mani & Ors., reported in

(1996) 3 SCC 132. Since we could find merit in the appeal though only in regard to relief, we are of the opinion that delay in filing the appeal deserves

to be condoned as otherwise reasons have been given for it. Accordingly, application under Section 5 of the Limitation Act is allowed.

The appeal is disposed of with the aforesaid.Â Â Â Â Â Â Â Â Â